Contents

* [Introduction 5](#_Toc374082862)

[Basic Principles 5](#_Toc374082863)

[Income Tax 5](#_Toc374082864)

[Statutory Interpretation 6](#_Toc374082865)

[Tax Avoidance 6](#_Toc374082866)

[Will-Kare v Canada Interpretation 7](#_Toc374082867)

[Gregory v Helvering – USA Case Tax Avoidance 8](#_Toc374082868)

[Duke of Westminster 8](#_Toc374082869)

* [Income/ Loss from Office/ Employment 8](#_Toc374082870)

[Introduction 8](#_Toc374082871)

[Characterization 9](#_Toc374082872)

[1. Whether you have an office / employment or independent contractor? 9](#_Toc374082873)

[Specific Anti-Avoidance Rule 9](#_Toc374082874)

[Inclusion 10](#_Toc374082875)

[Remuneration 10](#_Toc374082876)

[Payments on Termination 11](#_Toc374082877)

[General Benefits 11](#_Toc374082878)

[Scholarship, Fellowship, Bursaries 13](#_Toc374082879)

[Specific Benefits 13](#_Toc374082880)

[Allowances 16](#_Toc374082881)

[Exemptions 16](#_Toc374082882)

[Deduction 17](#_Toc374082883)

[Travel Expenses 17](#_Toc374082884)

[Meals 17](#_Toc374082885)

[Moving Expenses 18](#_Toc374082886)

[Characterization 19](#_Toc374082887)

[Weibe Door v MNR IC vs Employee test 19](#_Toc374082888)

[Engel 20](#_Toc374082889)

[Dynamic Industries Personal Service Business 20](#_Toc374082890)

[533702 Ont Ltd Personal Service Business 20](#_Toc374082891)

[Inclusion 21](#_Toc374082892)

[Goldman Gratuitous Pmt 21](#_Toc374082893)

[Fries Strike Pay 21](#_Toc374082894)

[Cirella Damages for Personal Injury = capital 21](#_Toc374082895)

[Curran Inducement pmt – irrelevant who paid 21](#_Toc374082896)

[Payments on Termination 22](#_Toc374082897)

[Mendes-Roux In respect of loss of employment 22](#_Toc374082898)

[Schwartz v Canada Loss of employment 22](#_Toc374082899)

[General Benefit 22](#_Toc374082900)

[Lowe Characterization of Benefit 22](#_Toc374082901)

[Huffman no material advantage 23](#_Toc374082902)

[Cutmore b4 lowe –even if required, taxable 23](#_Toc374082903)

[Deitch b4 lowe –even if required, taxable 23](#_Toc374082904)

[Savage Connection to Office 23](#_Toc374082905)

[Mindszenthy Gift – difficult to meet 23](#_Toc374082906)

[Detcheon 23](#_Toc374082907)

[Scholarship 23](#_Toc374082908)

[DiMaria 23](#_Toc374082909)

[Specific Benefits 24](#_Toc374082910)

[Thomas Eligible Housing Loss 24](#_Toc374082911)

[McArdle Debt Forgiveness 24](#_Toc374082912)

[Caanda v Hoefele /Krull Reversed by 80.4(1.1) 24](#_Toc374082913)

[Tsiapraillis Insurance Benefits 25](#_Toc374082914)

[Allowances 25](#_Toc374082915)

[Macdonald allowance 25](#_Toc374082916)

[Blackman Exception – travel allowance 25](#_Toc374082917)

[Exemptions 25](#_Toc374082918)

[Guilbert 25](#_Toc374082919)

[Deductions 25](#_Toc374082920)

[Travelling Expense 25](#_Toc374082921)

[Lucs 25](#_Toc374082922)

[Meals 26](#_Toc374082923)

[Healy ordinarily report to 26](#_Toc374082924)

[Moving Expense 26](#_Toc374082925)

[Storrow Pre-amendment – shorter list deduction allowed 26](#_Toc374082926)

[Giannakolpoulos Distance Requirement 26](#_Toc374082927)

[Dierckens purpose of move 26](#_Toc374082928)

[Rennie Ordinarily resides 26](#_Toc374082929)

[Ringham Ordinarily resides 26](#_Toc374082930)

* [Income/Loss from Business/ Property 27](#_Toc374082931)

[Characterization 27](#_Toc374082932)

[Definitions - *248(1)* 27](#_Toc374082933)

[Inclusions 28](#_Toc374082934)

[Gains from Illegal Activities 28](#_Toc374082935)

[Damages and Other Compensation 28](#_Toc374082936)

[Voluntary Payments 28](#_Toc374082937)

[Prizes and Awards 29](#_Toc374082938)

[Income from Property 29](#_Toc374082939)

[Deductions 30](#_Toc374082940)

[Illegal Expenses 31](#_Toc374082941)

[Damage Payments 31](#_Toc374082942)

[Fines and Penalties 31](#_Toc374082943)

[Legal Defence Costs 31](#_Toc374082944)

[Expenses with Personal Element 31](#_Toc374082945)

[Interest Expense 33](#_Toc374082946)

[Timings 34](#_Toc374082947)

[General Rules 34](#_Toc374082948)

[Inventory 35](#_Toc374082949)

[Running Expenses 36](#_Toc374082950)

[Prepaid Expenses 36](#_Toc374082951)

[Capital Expenditures 36](#_Toc374082952)

[Capital Cost Allowances 38](#_Toc374082953)

[Characterization 39](#_Toc374082954)

[Morden Business? 39](#_Toc374082955)

[Taylor Adventure of Trade 39](#_Toc374082956)

[Stewart 40](#_Toc374082957)

[Inclusions 40](#_Toc374082958)

[Gains from Illegal Act 40](#_Toc374082959)

[No 275 illegal act – taxable 40](#_Toc374082960)

[Damages 40](#_Toc374082961)

[Manley 40](#_Toc374082962)

[Voluntary Pmt 40](#_Toc374082963)

[Federal Farms 40](#_Toc374082964)

[Prize and Awards 40](#_Toc374082965)

[Abraham Lucky Draw – not taxable 40](#_Toc374082966)

[Rumack 40](#_Toc374082967)

[Savage 40](#_Toc374082968)

[Foulds Prescribed Prize 41](#_Toc374082969)

[Property from Income – Interest 41](#_Toc374082970)

[Perini Estate Int – can be retroactively calc 41](#_Toc374082971)

[Groulx Deemed Int 41](#_Toc374082972)

[Deduction 41](#_Toc374082973)

[Espie Printing illegal payments 41](#_Toc374082974)

[Imperial Oil Damage payments 41](#_Toc374082975)

[Rolland Paper Legal cost 41](#_Toc374082976)

[65302 BC 41](#_Toc374082977)

[Personal Expense 42](#_Toc374082978)

[Royal Trust recreation 42](#_Toc374082979)

[Stapley food n entertainment 42](#_Toc374082980)

[No 360 clothing expense 42](#_Toc374082981)

[Cippolone s 67 – reasonableness 42](#_Toc374082982)

[Locke 42](#_Toc374082983)

[Cumming Travel for business 42](#_Toc374082984)

[Bornfman Trust Int Expense 42](#_Toc374082985)

[Attaie reject indirect use 43](#_Toc374082986)

[Grenier ok to replace loan if still in business 43](#_Toc374082987)

[Mark Resources 43](#_Toc374082988)

[Ludco Ancillary purpose – ok 43](#_Toc374082989)

[Singleton Look at ancillary purpose 43](#_Toc374082990)

[Timing 43](#_Toc374082991)

[West Kootenay True Pic – method doesn’t have to be the same 43](#_Toc374082992)

[JL Guay Ltee timing it becomes payable 43](#_Toc374082993)

[Inventory 44](#_Toc374082994)

[Neonex inv cost – not deductible until sold 44](#_Toc374082995)

[Running Expense 44](#_Toc374082996)

[Oxford 44](#_Toc374082997)

[Capital Expense 44](#_Toc374082998)

[Johns-Manville 44](#_Toc374082999)

[Canada Steamship 44](#_Toc374083000)

[CCA 44](#_Toc374083001)

[Ben’s Ltd 44](#_Toc374083002)

* [Taxable Capital Gains and Allowable Capital Loss 45](#_Toc374083003)

[Computation 45](#_Toc374083004)

[Characterization 46](#_Toc374083005)

[Regal Heights inv/ capital property 46](#_Toc374083006)

[Burnett 46](#_Toc374083007)

* [Rules Relating to Computation of Income 47](#_Toc374083008)

[Allocation of Proceeds 47](#_Toc374083009)

[Non-Arm’s Length Transfers 47](#_Toc374083010)

[Attribution Rules 48](#_Toc374083011)

[Golden 48](#_Toc374083012)

[Lipson 48](#_Toc374083013)

# Introduction

## Basic Principles

* S 150(1) – return of income in prescribed form containing prescribed info file with minister, for each taxation year
	+ Prescribed – regulations, minister – s 220
	+ Each taxation year – s 249
* Look for definition
	+ S 248(1) – **definition section**
	+ if not 🡪 *Interpretation Act*
	+ Look at case law
	+ Dictionary
* **Function of tax**
	+ 1. Allocation –
		- when mkt fails to allocate ex. public gd,
		- When mkt don’t price things right – tax is gd way to price in the cost
	+ 2. Distribution – market distributes selectively – depend on demand n supply
		- Need system to moderate mkt
	+ 3. Stabilization –
		- Can change tax – to moderate fluctuation in business cycle

## Income Tax

* **Sources of income**
	+ **Main** –
		- Office + employment s 3(a)
		- Business + property
	+ **Now –** include taxable capital gain s 38
* **Sets of issue**
	+ **1. Characterization** – have you got one of these sources
	+ **2**. **Inclusion –** what’s included
	+ **3. Deductions –** what can be deducted
	+ **4.** **Timing –** when do u include/ deduct
* **Requirement for income tax**
* 2(1) – income tax shall be paid – on taxable income fro each taxation yr of every person resident in ca at any time in the year
	+ **Accounting period –** each taxation yr
		- 249(1) – individuals = calendar yr, company = fiscal year
	+ **Tax unit –** every person includes individuals and persons 248(1)
	+ **Rates –**progressive rates117(2)
	+ **Tax base –** taxable income
		- 2(2)- **Income + additions – deductions** (permitted by Div C)
* **Income** – sth that flows over a period of time
	+ Diff from capital – stock of wealth at one point
* **Computation of Income**
* S 3 – **income = (a) + (b) – (c) - loss, if negative = 0**
	+ A – all income of the year including: office, employment, business and property)
		- Excludes capital gain
		- Sources- compute each source separately then aggregate to get total
			* Office and employment – labour
			* Business – active income
			* Property – passive income
			* Could have income from unspecified source
	+ B - all capital gains + net gains – capital loss
	+ C - deductions
	+ D – business loss can be deducted against all kinds of income
	+ E – special statutory deductions
	+ F – no negative income 🡪 income = zero and loss gets carried over

## Statutory Interpretation

* **Traditional approach** (till 1984)**–** narrow and strict
	+ Concern only with letter of the law
	+ Presumption
		- Interpret in favour of taxpayer
			* Reason – legislature is powerful
* **Modern interpretation**
	+ Driedger’s construction
		- Words read in entire context in grammatical and ordinary sense
		- Harmoniously w/ scheme, object of act n intention of parliament
		- Take into acct result of consequences of diff interpretation
			* If there’s one reasonable n fair vs one that’s not – prefer reasonable / fair one
* **Approach**
* 1. Start with the words –
	+ Look at definition in the act, then dictionary
	+ Principles
		- Associative word principle – interpret with other words in which its associated w/ in the sentence
		- Limited class principle - general term should be interpreted down a bit in association w/ other words
			* Interpret to mean “others” within the same class
* 2. Purpose and intention
* Scheme of the act
	+ Mediates the broad purpose and how its put into action
	+ Principles
		- Presumption against totalogy – if parliament used diff word for something then probably meant diff things
		- Presumption of consistent expression
			* if used same verbal formula in diff place- meant same things
		- principle if implied exclusion
			* imputes meaning to the absence of the word
* Object of the act – ma refer to extrinsic doc, infer from legislation, academics
* Intent of parliament
	+ Can look at external sources – such as statements by minister
	+ presumptions
		- no retroactive legislation
			* Need to be explicit if want to be retroactive
		- Don’t overwrite private law rights
		- Doesn’t violate Charter / international law
		- Doesn’t extend law in extraterritorial fashion
	+ Consider consequences
* MacInnes *–* **looked at**
	+ Purpose and intention
	+ Context
	+ Intent
* **Now –** textual, contextual and purposive approach
	+ specific rule governs over general rule Schwartz

## Tax Avoidance

* **2 approaches**
* 1. Strict Construction and legal formation – CA n UK
	+ Legal substance over form doctrine Duke of Westminster
		- Look at the legal relationship actually est
			* Look at what it is in the law – not what the party calls it
		- Rejected US approach of business purpose – reason- too discretionar
	+ Sham and ineffective transaction doctrine Duke of Westminster
	+ Specific anti-avoidance rules – SAARs
* 2. Economic substance USA
	+ economic substance over form helvering
* **GAAR** s 245
* **Element**
	+ 1. Tax benefit – has to be some tax benefit
		- Broadly defined – include deduction, credits, etc
	+ 2. Tax purpose – apply to tax motivating transaction
		- Engaged in to primarily avoid tax
	+ 3. Abuse concept
* **Approach** – provision of last resort
	+ 1. Determine whether there’s an avoidance transaction
		- Test – comparative and objective
		- 245(3) – will receive some tax benefit – but for this section
			* Unless – **objectively reasonable**
				+ Arranged for bona fide purpose rather than tax purpose
		- Tax benefit – factual determination so deference to judge
			* **Comparative –** compare what you would have done but for the tax purpose
				+ Low threshold – any deduction is tax benefit
	+ 2. Tax purpose- factual determination
		- Test – comparative and objective
	+ 3. Abuse s 245(4)
		- Applies to transaction **only if reasonably considered**
			* A – would result in misuse OR
			* B – would result in abuse

##### Will-Kare v Canada Interpretation

F

* tax incentives for
	+ Accelerate capital allowance and investment in certain property
* Tp – paved sidewalks, used to purchase from competitor but now construct own plant
	+ During the year sold ¼ to others, argue when paved sidewalks also sold ashes to clients
* Govt – disallowed incentive cuz its not “used primarily for sale” its used for own business
	+ Ashes – passed by accession n note sale

I Interpretation of “use primarily for sale”

A

* **Majority –**
* Look at legal definition of sale – decide it should apply
	+ Reason – assume that there’s consistency across law of CA
		- Meant the legal meaning – would use it in another way if had other intention
* **Dissent -**  prof agrees w/ this
	+ Approach – ppl should be able to understand the law 🡪 plain meaning approach
		- If it’s clear legal term –Ok
		- If not clearly a legal term – consider other factors
			* Look at consequence
				+ Absurd to disallow incentives
			* Intention of parliament – look at ministers statement n debates
				+ Main purpose – encourage manufacturing

##### Gregory v Helvering – USA Case Tax Avoidance

F

* Tp want to sell shares without having been double taxed on the capital gain n dividends
	+ Incorporated another company – which bought the shares n dissolved it
		- Reason – if reorganization 🡪 no gain realized🡪 not taxable
* Rev Auth-
	+ 1. No economic value/ substance in transaction that she did
	+ 2. Sham

A

* Within statute?
	+ No – what they did was not pursuant to reorganization
		- Form of reorg – but no substance
* Business purpose test – interpretive overlay of all provision
	+ If transaction is absent business purpose🡪 suspicious
* Sham doctrine
	+ If do sth that looks like some legal transaction bt econ effect is sth else
		- May be called the sth else
* Economic substance > form approach

##### Duke of Westminster

F

* Signed deed of covenant with Gardener
	+ Claim – its not salary / wage- but still same amt for same service –

A

* **What is the k**
	+ Commissioner – still employment K since same amt n in Duke’s service 🡪 no deductible
	+ Tp – not employment k
	+ Court – disagreement
		- Look at the rights establish – not a collateral agreement
* **Economic substance of reality**
* Commission – argue substance over form
	+ Even if not employment k – substance is an employment k
* Court – Cannot have substance over form doctrine
	+ Reason – discretionary 🡪 court will be replacing the law
		- Tp – right to plan way around tax as long as w/in law
	+ **Doctrine**
		- Legal Substance over form – in Ca
			* Look at the legal relationship actually est
				+ Look at what it is in the law – not what the party calls it
		- Sham -
			* Ca- focus on what the actually legal relationship
			* US - focus on economic substance doctrine
		- Ineffective transaction doctrine
			* Try to est legal relationship – but don’t get it right

# Income/ Loss from Office/ Employment

## Introduction

* 3(a) – source of income
* 5 –basic rule –
	+ Income from office/ emp –includes salary, wages n other remuneration including gratuities
* **Business vs employment**
	+ Business adv – more deduction
		- Low rate
		- Income splitting possible

## Characterization

### 1. Whether you have an office / employment or independent contractor?

* **Characteristics of the relationship -** s 248(1)
	+ Officer – position is there ready for person to fill it
	+ Employee – position of an individual
* **Test for Independent C / Employee** Weibe Door
* **1. Control -**
	+ K of service – employee
		- Master and servant – master has right to tell them what and how work is done
	+ K for service – IC
		- Principal n agent – has right to tell agent what to do only
* **2. Ownership of tools –** include principal work place
	+ IC – own tools for own use
		- If work from home – more likely to be IC
	+ Employee – tools provided by employer
* **3. Chance of Profit / Risk of Loss –** compensation for work
	+ - Degree of financial risk taken
		- Degree of responsibility for investment and management
	+ IC - Chance of profit – if do better / worse get more or less
	+ Employee – only get paid salary
* **4. Integration test –**
	+ Work is integral to business?
		- Employee – work is integral to business
		- IC – work is accessory to work
	+ Approach
		- From perspective of **employee not employer**
			* reason
				+ when viewed from employer – won’t hire anyone unless need them
		- look at whether its **exclusive relationship?**
			* If work for one person – likely employee
			* If work for diff ppl – more likely IC
* **5. Other factors**
	+ Whether business is already established –
	+ Specific result
	+ Intention of the party Royal Winnipeg Ballet
		- Agreement is not determinative of the relationship – irrelevant what they call it
			* Must determine the legal substance over the form –
		- Reason – may not have equal bargaining power
* **Approach**
	+ Total relationship test
		- Who’s business is it?
		- Contextual and programmatic
		- Look at all the tests

### Specific Anti-Avoidance Rule

* 125(7) – **personal service business**
	+ Requirement
		- A - Individual – provides service thru corporation to a would be employer
			* **But for the company** – would have employee status
			* “incorporated employee”
		- B – any person related to “incorp emp” – is specified SH
			* owns at least 10% of shares of the corp of the service company
			* Related person – connected by blood relationship, marriage/ adoption
	+ Exception
		- C – employs more than 5 full-time employees thruout the yr Or
		- D – service are provided to associated corp
	+ Implication 18(1)(p)
		- Limits the expenses that can be claimed – as oppose to actual business
		- Deduction allowed
			* Cost of wages and salaries paid
			* Other employment provided
		- denied – low corporation tax rate
* **Approach** Dynamic Industries
	+ **1. Within the requirement?**
		- Working thru corp to a would be employer?
		- Individual / related person owns the share?
	+ **2. but for the corp, would be employee? Look at the business from before and after**
		- Apply the Weibe Door test- employee?
			* Ownership of tool
			* chance of profit n risk of loss
				+ If assumed lots risk – regular business
			* Integration
				+ If worked for other people – regular business
				+ If only work for one business –PSB 533702
			* Control
				+ If no independence- personal service business 533702
		- May consider business purpose test –
			* 533702 – no business purpose –so its PSB

## Inclusion

### Remuneration

* 5(1)-**includes : salaries, wages, gratuities, other remuneration**
	+ Received by tp – means get the cash
* 5(2) – loss can be deducted
* 6(3) – **deemed an amount to be** **remuneration**
	+ Anti-avoidance rule –
	+ Purpose – broaden scope of inclusion to capture things that wouldn’t be in remuneration
	+ Requirement
		- Either:
			* A – pmt for employee during employment OR
			* B – from obligation arising out of agreement b4/during/immediately after payee was employed by payer period
				+ collateral to employment
				+ On acct, in lieu of pmt or in satisfaction of obligation arising out of agreement
				+ Arise out of agreement – close to time of employment

But its not employment K

* + - And – one of C/D/E – **economic substance-**
			* + regardless of form/ effect, reasonable to assume its econ substance is
			* C – inducement
				+ consideration for accepting employment
			* D –remuneration - payment for services
				+ if look at the pmt – regardless of form/ effect – reasonable to assume
			* E – covenant
				+ with reference to what the employee is or is not to do b4 / after termination of employment
* **Gratuitous Payment**
	+ **Consider remuneration if:** Goldman
		- Connection with service
			* Does not need direct connection
			* If viewed from receiver – it’s a payment for service
		- Legal obligation
			* Even if doesn’t exist – can still be for services/ remuneration
* **Strike Pay**
	+ **Def’n** – payment from union for withdrawing your services to employment
		- Union – build up strike funds to enable employee to participate in strike
			* 8(1)(i)(iv) - Union dues – deductible
			* 149(1)(k) - Union – aren’t taxed on income they earn🡪 strike fund is not taxable
	+ **Taxable if: During strike –**
		- Received when employed by union during strike Loeb
		- Originated from business by union during strike Ferris
	+ **Non-taxable**
		- If only strike pay
* **Damages for Personal Injury**
	+ **Not taxable –** since loss of earning capacity is of capital nature Cirella
	+ Surrogatum principle **–** doesn’t apply to employment contextCirella
* **Inducement payment**  6(3)(c)
	+ As long as essence of payment – is for service
		- Irrelevant whether paid directly by employer or other person Curran

### Payments on Termination

* **Employment K**
	+ When terminated / ceased
		- If getting paid from discontinuation – taxable
		- Payment for terminating employment K b4 employment begins – Schwartz
			* Not retiring allowance / income from employment
		- Lump sum pmt for loss of employment Schwartz
			* That’s for “ embarrassment, anxiety and inconvenience”
				+ Allocation – unclear
				+ Whole lump sum not taxable as income
* **Retiring allowance -** 56(1)(a)(ii)
	+ Requirement – defined in 248(1) –
		- 1. In respect of loss of employment
			* In respect of – broadest possible scope Mendes-Roux
				+ Encompasses any pmt connected with tp’s loss of employment
		- 2. Must have loss of office/ employment
			* If not yet under obligation to provide personal service Schwartz
				+ Pmt – is not retiring allowance
			* Statutory language – excludes intended employment Schwartz

### General Benefits

* 6(1)(a) – **value of benefits** include in income
	+ Include: value of board, lodging and other benefits
	+ Received/ enjoyed by:
		- Tp
		- Person who doesn’t deal at arm’s length w/ tp
	+ **Purpose of provision**
		- Prevent ppl to avoid tax by paying non-cash incentives
* **Characterization**
* **1. Characterization of benefit**
	+ Limited class principle – “and others” refer to things that are similar to the ones mentioned
	+ Requirement
	+ **1. Benefit – material advantage conferred measurable in $$ terms** Lowe
		- Not focused on mental / psychic benefit
		- If not making them better off – only restoring to original econ situation – not benefit Huffman
	+ **2. if business related 🡪 not taxable**
		- When personal benefit is incidental 🡪 irrelevant
			* If personal benefit is beyond incidental 🡪 taxable
		- Legal expenses – if it’s a consequence of their job – not taxable Pellizzari, Clemiss
			* If unrelated to part of job – legal expense consider personal expense – taxable
		- Even if required by employer - may still be considered taxable Cutmore, Deitch
			* As long as there’s economic advantage
			* Issue­ - decided b4 Lowe, may argue its required like in Lowe so not taxable
			* After Lowe- even if it’s out of necessity – may be taxed McGoldirck
				+ McG – provided meals working at a remote casino

Impossible to go off site to eat

* + - * + Tax rate – depend on how many times u take adv of the benefit

If only take adv ½ of the time – tax on ½

* + CRA Administrative exemption- if doesn’t amt to extra remuneration
		- 1. Employer-provided parties/ social events
			* Dunlap – obtain benefit even tho unilaterally conferred – taxable
			* CRA response – not taxable
				+ If – generally available to all employees

Cost does not > $100/person

* + - 2. Discounts on merchandise n commission on sale
			* Doesn’t include – if extraordinary arraignment – where purchased at less than employer’s cost
		- 3. Transportation to job
		- 4. Recreational facilities
			* Include – free to use the facilities and
				+ Pmt to become member of social/ athletic club

If personal benefit is incidental – not taxable Rachfalowski

Not golfer, only went to enhance company’s image

* + - 5, transportation passes
			* Airline passes- taxable if travels on space-confirmed basis, paying < 50% of fare available
			* Bus n rail companies – no tax
			* Retired emp of transportation companies – no tax
		- 6. Frequent flyer program
			* If not convert to cash
			* Not used as alternative form of remuneration / tax avoidance
* **2. Connection to office/ employment**
	+ “in virtue of , connected to , in respect of”
	+ Test- Whether was conferred on tp as an employee / simply as a person Savage
		- In respect of – widest scope
			* Look at whether the subject matter is related to the employment
	+ Can be gift from employer – high threshold Mindszenthy
		- Require fairly cogent evidence
			* Intention of donor – important factor
				+ If deduct as expense 🡪 not gift
	+ Even if not paid directly by employer – can still be consider benefit connected to office Waffle
		- Waffle – received free holiday from Ford directly but employed at ford dealership
	+ Even if required condition unrelated to employment to be – can still be emp benefit Giffen
		- Giffen – frequent flyer pt – receive benefit cuz fly a lot for employment + member of frequent flyer
		- NOTE – CRA – no emp benefit from frequent flyer pt
* **3. Value –** how benefit should be valued in monetary terms
	+ General rule - Fair market value Schroter
		- Reason – need to be fair to other tp who have not received the benefit
			* Objective assessment
	+ Other rules
		- Cost of providing benefit –
			* (Caribbean vacation) Waffle
			* Caretaker – required to be on-call so require to stay in caretakers’ suite Jelles
				+ Not FMV of the rent – but the value of benefit received
		- May discount the fair market value
			* Ring had corporate logo- impact on fair mkt value Wisla
		- Presumed annual rate of return on the cost
			* When difficult to value – yacht that’s available anytime Taylor
				+ Doesn’t not consider rental –cuz available all the time
				+ Not whole value – cuz don’t own it

### Scholarship, Fellowship, Bursaries

* 56(1)(n) – **scholarships, bursaries**
	+ **If received in respect of business/ employment – taxable as employment income**
		- benefits includes 6(1)(a)
			* received / enjoyed by person who does not deal at arm’s length –
			* 6(1)(vi)
				+ Program by tp’s employer – designed to assist individual to further their education

If tp – deals w/ employer at arm’s length

Reasonable to conclude – not substitute for salary/wage/remuneration

* + - * if scholarship paid to children – may still be considered benefit
				+ amendment to 6(1)(a) – reversed DiMaria
* 56(3) – **exemption**
	+ A – scholarship, fellowship/ bursary in connection w/ enrollment in
		- I – educational prog
		- Ii- elementary/ secondary prog
	+ B – scholarship – for literary, dramatic, / artistic work
	+ C – prize- taxable if > $500
* 56(3.1)- exemption only applies to ppl pursuing degree
	+ A – intend to support tp’s enrollment in program 🡪 leads to degree
	+ B – limit exemption for part-time student
		- Only educational cost

### Specific Benefits

* **Relocation Assistance**
* 6(23) –deemed employer-provided housing subsidies – as benefit included
	+ Requirement
		- In respect of employment
		- Received benefit- cost of, financing of, use of or right to use a residence
	+ Taxable if employer gave lump sum to cover higher living expense cost Phillips
	+ Exception
		- Moving expense – not taxable benefit Pollesel
			* Reason – can either be deducted from tax/ benefit is not taxable
				+ Occasioned by work relationship n compensates u for additional cost
		- Reimburse employee for expense in moving employee n family n household effect
			* Either cuz:
				+ Emp transferred or
				+ Having accepted employment at a place other than where former home was located
			* Not taxable
		- If employer pays for expense of moving employee n family n household effect out of remote place at termination of employment
			* No benefit
		- If move employee back home – not taxable MacInnes
			* Military covered cost for tp to move to original home
			* Not taxable – no economic gain/ adv/ benefit
* **Compensation on Housing loss**
* **1. Housing loss –** full amt taxable
	+ 6(19) – amt paid in respect of housing loss in respect of employment – deemed taxable benefit
		- Test – in respect of
		- Exclude – eligible housing loss
	+ 6(21) – amt of housing gloss
		- Greater of (a) or (b) > c or d
		- = cost base/ highest fair mkt value > proceed / fair market value of disposition
			* A – adjusted cost base of residence
			* B – highest fair mkt value – w/in 6 mth period
			* C – if house disposed of
				+ Lesser of:

I – proceed o disposition and

Ii – fair market value

* + - * D – other case- fair market value
* **2. Eligible Housing loss**
	+ 6(20) – eligible housing loss – amt
		- 1st $15k – free
		- A - If exceed , tax ½ of the amt above 15k
			* If get them in diff years – will be subtracted so 15k exemption will be used up
			* =1/2 (compensation – 15k)
		- exceeds
		- B – total of all amt which is included for preceding taxation yr
			* = ½ (previous yr amt + this yr – 15k) – amt deducted last yr
			* Ex. 2012 – give 30k, 2013 – give 10k
				+ 2012 = ½ (30k-15k) = 7500
				+ 2013=1/2(30k+10k – 15k) – 7400 = 5000
	+ 6(22) – definition
		- Eligible housing loss – eligible relocation
			* Eligible relocation:
				+ Move to new work location – to work/ business
				+ Move 40km closer to this new work location
			* Can only be for one residence
	+ **Test –**
	+ 1**.** Has relocation enable him to carry on employment / business in Ca? Thomas
		- Not eligible relocation – if no established employment at new location Thomas
		- Can argue – provision only said did it enable you to carry on
			* Did not say w/in how long need to find employment / work for same employment
	+ 2. moved 40km closer to new work location
* **Forgiveness of Debt**
	+ 6(15) –
		- A- deemed benefit – if debt extinguished/ forgiven
		- B – value – amt forgiven
	+ 6(15.1) –forgiven amt
		- Lesser of –
			* Amt outstanding OR principal amount
		- Minus – amt you already paid
	+ **Test –** 6(1)(a)
		- Nexus test- in respect of employment
			* Even if forgiven on termination – can be considered taxable McArdle
				+ If forgiving the loan was integral part of arrangement which ended employment
* **Low Interest/ Interest Free Loan**
* 6(9) – if deemed by 80.4(1)- to be benefit – need to include in income
* 80.4(1) – deemed to be benefit if received loan
	+ Requirement
		- Because of / as consequence of:
			* Narrower than in respect of Hoefele
		- Previous, current or intended office/ employment
	+ Calculation
		- (a+ b ) – (c+d)
		- A – prescribed rate \* amt
			* Prescribed rate = avg quarterly yield of Govt of Ca treasury bills
		- B – int paid /payable by employer
		- C – int paid by employee
		- D – reimbursed employer for the amt they pay
	+ Implication
		- If interest rate u borrowed increase – taxable amt decreases
		- If borrow more money – amt decreases
			* Encourages you to borrow more money
* 80.4(1.1) –reversed Hoefele
	+ Loan deemed to be received / incurred if
		- Reasonable to conclude –
			* But for the previous/current/intended office either
				+ A – terms of loan / debt would be diff OR
				+ B - would not have received the loan/ incurred the debt
* **Home relocation loans –**
	+ 80.4(4), (6) – int on loans for home purchase/ relocation
		- Rate of interested determined under 80.4(1)(a)
			* May NOT go above prescribe rate of int – at beginning of 5 yr period
	+ 110(1)(j) – eligible for deduction in respect of **home relocation loan**
		- Lesser of
			* I – 80.4(1) deems benefit in respect of at least one loan that is not a home relocation loan
				+ Benefit – would have been deemed if 80.4(1) only applied to home relocation loan
			* Ii – amt of int for yr – computed under 80.4(1)(a)
				+ If home relo loan – had principal balance of 25k
				+ And loan was issued – more than 5 yrs ago, / extinguished after 5 yrs
				+ \*\*exam- computation = prescribed rate at beginning of initial yr \*25K
			* Iii – total benefit deemed under 80.4(1)
		- Provides
			* In computing taxable income
				+ Deemed int benefit – of first 25k of home relocation loan

- nil up to 1st 5 yrs of loan

* **Insurance benefits**
* 6(1)(a)(i) – employer’s **contribution to** wage loss program – not taxable benefit
* 6(1)(f) – benefits received for the wage loss program is included in income if
	+ Requirement
	+ **Amt payable** on periodic basis
		- Payable – as long as had legal obligation to pay Tsiaprallis
			* Even if paid in lump sum – still ok
			* Only the part – that’s related to accumulated arrears
				+ Not – future pmt = of capital nature
	+ **Pursuant to** wage loss replacement plan
		- Pursuant to – consider surrogatum principle
			* Can be indirectly pay for the plan Tsiaprallis
	+ tp’s employer had **made a contribution**

### Allowances

* 6(1)(b) – **allowances received for personal / living expense** / other purpose included –
	+ Lots exceptions
	+ **Requirement** Macdonald
		- 1. Arbitrary amount
		- 2. Paid for specific purpose
			* Even if not used for improper purpose n reasonable estimation North Waterloo
				+ Can still be consider taxable allowance –
				+ Reason – treated as additional remuneration – not as reimbursement
		- 3. At discretion of recipient
	+ Diff from
		- Reimbursement – not an arbitrary amt n no discretionary use
			* Reason – need receipt
		- Advance – give certain amt of money but need to acct for it
			* Ex. give change bak / acct for expenditure
* **Exceptions**
* 6(1)(b)(vii) **–** exclusion for reasonable allowance for travel
	+ Requirement
		- In performance of duty
			* Need to look at:
				+ Length of time Blackman

Sojourning – away temp for lengthy period of time

not travelling – so taxable on allowance

travel – going around for short time

* + - * + place stayed at
		- Away from metropolitan area / municipality where emp ordinarily worked/ reported
		- Non-motor vehicle expense
	+ 6(1)(b)(vii.1) – motor vehicle exception
		- Requirement
			* Reasonable allowance for travelling in performance of duty
		- 6(1)(b)(x) – if not based solely on km driven for work
			* Not reasonable allowance

### **Exemptions**

* 81(3.1) – Reasonable allowance – as paid travel allowance
	+ requirement
		- part-time work
		- More than 80km
		- Require u to work away from where u normally work
* 6(6)(a)(i) – special work site – allowance for lodging /boarding/transportation exempt
	+ Requirement
	+ I – temporary nature
	+ Maintained residence elsewhere
		- A – available for tp – not rented out by tp to others
		- B – too far to commute
			* CRA - around 80km
			* Court – would also consider – type of work, hours of work, difficulty of commute
				+ Assess reasonable commute in light of tp’s work
	+ Ii – location – too remote so cannot reasonably be expected to est n maintain residence
		- Only need to be an unusual work place for employee Jaffar
			* Ie – assigned to another premise temporarily
				+ Does not need to be remote – as in “northern bush”
	+ Require to be away for no less than 36 hrs

## Deduction

* S 8 – contains specific and detailed deduction
	+ Cannot deduct – if not listed

### Travel Expenses

* 8(1)(h) – **travel expense deductible – exclude motor vehicle**
	+ Requirement
	+ In course of office/ employment
		- Narrower test – “in course of” Luks
		- Can deduct if:
			* If travel to diff places – can deduct ones that are not ordinarily report to
				+ Chrapko – teller for jockey club – required to travelled to 2 location in Toronto and 1 in Fort Erie - only FE one deductible
			* Expense travelling from home to other location that’s not ordinarily report to
				+ Merten – Chrapko qualified the word by recog tp can deduct travel expense from home to place of work

As long as work – is not place usually worked

* + - * General approach – if required to have all documents while attending each diff place – need car 🡪 deductible
				+ Evans – school psychologist who needs to carry all paperwork n require to travel to diff school everyday
		- Cannot deduct
			* Not part of employment – ie carrying own tools Luks
	+ I - Ordinarily required to carry duty away from employer’s place of business
		- Place of business – where you ordinarily report to Nelson
			* Not head office of business
	+ Ii - Required under K of employment – to pay for travel
		- Can be implied
	+ Iii- Did not receive tax-free allowance
* 8(1)(h.1) – **motor vehicle travel expense**
	+ Requirement
		- In course of office/ employment
			* Narrower test – “in course of”
		- I - Ordinarily required to carry duty away from tp’s place
		- Ii - Required under K of employment – to pay for travel
			* Can be implied
		- Iii- Did not receive tax-free allowance
* 8(10) – in order to deduct – need prescribed form signed by employer
	+ Stating employee is required to travel for job and not reimbursed

### Meals

* 8(4) – meal allowance
	+ Requirement
	+ Required to be away
		- From municipality/ metropolitan area where tp ordinarily report for work
			* Approach Healy
				+ 1. Find the municipality where emp usually reports for work
				+ 2. Find whether was away from that for more than 12 hours
			* even if worked at diff locations – can still be deducted
				+ reason - section is to enable emp to deduct out of pocket exp when away from place of work
	+ Not less than 12 hours
* Subject to 67.1(1) –
	+ Expense for food – deemed to be 50% of lesser of
		- A – amt act paid/ payable and
		- B – amt that is reasonable in circumstances

### Moving Expenses

* S 62 – **moving expenses deductible if**
* **1. eligible moving expense**
	+ 62(3) – definition includes
	+ A- travel cost- “reasonable amt “
		- in course of moving tp n member of household from old to new
		- dogs are member of household Critchley
			* can deduct cost for shots , tranquilizers paid as part of move
		- excludes expense for house and job hunting travel Ball
	+ b – cost to transport/ store household effects
	+ c – meals/lodging for 15days – no restriction of reasonable amt
		- near old/ new residence – for tp n family members
	+ d – cost to cancel the lease –
	+ e – tp’s selling cost in respect of sale of old residence
		- Pollard - higher int rate paid instead of penalty – can be deductible
			* To discharge mortgage – paid higher tae of int on new mortgage🡪 deduct additional int paid on new mortgage
		- Collin- if direct n immediate object was to sell house – can deduct
			* Paid lump sum to trust as inducement to sell house
	+ f – cost of legal service wrt of purchase of new residence, tax and fees
		- if sold old residence
			* if renting old residence- cannot deduct
	+ g – int, property tax, ins premiums, cost of heating n utilities of old residence – up to $5000
		- I – old residence has to be empty
		- Ii – reasonable effort made to sell
		- Situation – can’t sell old residence, can deduct carrying cost
	+ H – cost of revising legal doc to reflect new address n connecting/ disconnecting utilities
* **2. eligible relocation** – s 248(1)
	+ 1. Distance Requirement – 40km closer to new work location
		- test = shortest normal route used by public Giannakolpoulos
			* Need to incorporate some rationality n realistic approach Nagy
				+ If route was too convoluted – even tho shortest distance

May not be correct measurement

* + - * + Consider – shortest route +normal route to travelling public
				+ F- shortest route Cra calc - require to take tons of turns n travel in heavily congested areas – not realistic
		- Exclude
			* Even if occasionally inconvenient – still consider shortest normal route Higgins
				+ Shortest – travelled by ferry, even tho long line up n occasionally freeze so no ferry – still not deductible
			* Consideration of time Lund
				+ If both were considered normal –

Proper measure was the shorter

Even if one took way longer then other

* + 2. Purpose of the Move-
		- A – enable tp to carry on business/ to be employed at a location
			* **“**enable” - interpreted more broadly Abrahamsen
				+ don’t need to be already employed at the new location b4 move
				+ no time requirement required by act –

can be employed for a while then moved closer Dierkens

* + - * new work location- conflicting case law
				+ disallow- only if there’s new work location

Grill – moved cuz divorced but no change at job

Moreland **–** assigned new employment duties but same location

Howlett –promoted so need to spend more time at work

* + - * + Allowed – even if no new work location

Gelinas – went from pt🡪 full-time so moved closer

“sth must change at work”, only need to be a location in Canada – no requirement of new work location

Dierkens – no new work location

* + - * + prof – doesn’t need new work location, just enable u to carry on work

gelinas approach – cuz look to words of statute

* + 3. Where ordinarily resided
		- Can only ordinarily reside at one place – even if reside in diff places Rennie
		- Conflicting case law
		- Ordinarily 🡪 Way station🡪 new – ok to deduct Ringham
			* Temp domestic arrangements - can still be regard as way stn Neville
				+ ie renting in btw – as long as subjective intention to return
				+ if no intention to return – renting may be ordinarily residence Calvano

rented house

16mth later to sold old hse – cuz tenant insisted longer lease

not deductible – rental =ordinarily residence

* + - * could be a period where there’s no ordinary residence Pitchford
				+ Pitchford – Vic🡪 Mj🡪Saskatoon

MJ – not ordinarily residence cuz most stuff remained in storage, did not take a residence ordinarily resided

* + - Ok to deduct cost of selling former residence – even if sold yrs later Jaggers
			* After acquired new residence – should not be unduly narrow by the technical approach
		- Temporary work
			* Cannot deduct if worked at diff location only temp Turnbull
				+ Worked at various locations temp but retained a home n returned to it each yr –turnball
				+ Macdonald – not deductible cuz didn’t take belongings, didn’t change address, wife stayed at original location
			* Can deduct if accepted temporary K
				+ Cavalier – even if wife stayed behind n no changes in address
* **3. Limitation doesn’t apply** to the extent of
	+ Limit on deductible – up to income earned that the relocation enabled tp to carry on
	+ A – paid on tp’s behalf – cuz of office/ employment
		- Pollesel – if reimbursed / paid by employer for moving expense
			* Non-taxable benefit – so not deductible
	+ B – next yr can deduct the remaining – unlimited carry over
	+ C – amt does not exceed
		- I – total of new income at new work location / carrying on business at new location
			* Reason – expense is to earn income at new location where moved to
	+ D – can deduct if included reimbursement n allowances received in income

###### Characterization

##### Weibe Door v MNR IC vs Employee test

F

* Weibe door – had specific understanding with door installer that they are independent contractor
	+ So responsible for own tax
* Issue – EI and pension plans –
	+ If employee – need to withhold EI n pension plan

A

* Case at bar
	+ 1. Control – indecisive
	+ 2.tools - IC – owns the tools, W only provides special rack
	+ 3. Chance of profit – IC
		- If do jobs well n fast🡪 more money, if bad job have to pay for warranty work
	+ 4. Employee – TC erred, need to look from employee’s pov

##### Engel

F

* Tp - business reporter was with global, incorporated Reason corporation
	+ Enter into exclusive K with Reason which enter into K with Global
		- Overlap btw 2 K but resigned from Global

Hypothetical – if GAAR applies

* 1 tax benefit – yes
* 2. Primary tax motivation - difficult to determine
	+ Tp’s purpose – want more flexibility in employment, tax was part of consideration
	+ Court –
		- There is a K btw reasoned n K – so not substance over form

##### Dynamic Industries Personal Service Business

F

* DI- heave construction company
	+ Share – originally owned by husband than transferred all to spouse
	+ Result – husband now employee of company
* Events
	+ Do works for diff companies
	+ 95-99 – only worked with one company SILL
		- Reason – big K, required lots of work
			* Responsible for managing SILL’s K with Fording
		- Compensation – cost plus basis
			* Paid for living out allowance, over time
			* DI - has to fix error at its own cost
				+ No compensation for – overhead cost
				+ No security from SILL – had to arrange for own financing
* Rev – reassessed argue its income
	+ Reason – 18(1)(p) – personal service business

Analysis

* **Reasonable to be regarded as employee of SILL but for corp of Dynamic?**
	+ For – exclusivity of work
	+ Court – No
		- Approach – look at business from b4 and after the period of assessment
		- Assumed a lot of work
		- Had been working with a lot of ppl
			* Only w/in that period – so much work so consumed all his time

##### 533702 Ont Ltd Personal Service Business

F

* Company – BPH –plumbing and heating supply, shares owned by husband
	+ Wife – set up corporation n worked for BPH
* Court – Personal service business
	+ Reason –
		- showroom had no business purpose
		- Worked for nobody else but BPH
		- No commercial independence
* Contract to Dynamic

#### Inclusion

##### Goldman Gratuitous Pmt

F

* Tp – shareholder of a company in receivership
	+ Involved in plan of reorganization
	+ Remuneration for work –
		- Informed – no remuneration but legal fees would be sufficient so can get sth
	+ Counsel received legal fees – paid 14K to Goldman in 2 yrs
* Tp argue – gift from lawyer
* Govt – income is taxable

A

* **Taxable remuneration**
* Reason
	+ Money received for and in connection to his services
		- Connection – doesn’t have to be direct
	+ Legal obligation - even if doesn’t exist doesn’t mean its not for services/ remuneration

##### Fries Strike Pay

F

* Received strike pay – but was assessed as income

A

* **@ FCA –**
	+ Tp – return of capital – return of the person’s own income
		- Ie paid union dues – now taking some back
		- prob－return of capital already paid tax, these money never taxed
	+ Court –
		- Union dues paid – lost identity when paid into the common fund
			* No right of withdrawal
			* Disposition – solely determined by exec
		- If the funding is – after-tax dollar
			* Looks like income – replacement of it
				+ Reason – periodic payment, related to employment
* **SCC -**
	+ Not sure – so benefit of doubt goes to TP

##### Cirella Damages for Personal Injury = capital

F Received damages for car accident – include special damages n general damages for loss of future income

A

* **Special damages – income from source?**
* Govt – surrogatum principle
	+ If have right to an amt n gets compensation –
		- Compensation – is taxable as it surrogate of the income
* Court – **not taxable, of capital nature**
	+ Surrogatum principle – applies to business context
	+ Loss of capacity – character of capital

##### Curran Inducement pmt – irrelevant who paid

F Tp induced to resign from current work n work for another company –money paid by the person directly

A

* **Inducement pmt-** even if not paid by employer directly?
* Tp – capital receipt compensating for what would have got if hadn’t resign
* **Court – payment for service –**
	+ Considered inducement
		- True nature – depends on agreement n all circumstances

###### Payments on Termination

##### Mendes-Roux In respect of loss of employment

F Wrongfully dismissed 🡪 compensation – in lieu of salary / overtime

A

* Actual loss of office/ employment? Yes
* Interpretation of “in respect of” – broadest possible scope
* Case at bar
	+ Amt that’s employment – related – taxable

##### Schwartz v Canada Loss of employment

F TP – arranged to quit partnership n work for Dynacare with salary + stock option

* Tp – given notice but Dynacare informed tp that service is no longer needed
	+ Worked for another firm
	+ Negotiated settlement with Dynacare

A

* **Retiring allowance - Was there a loss of employment?**
* Minister – settlement pmt – taxable as
	+ A – retiring allowance
	+ B – income from non-enumerated sources – source is the employment K
* **Court – No loss of employment**
	+ Reason –
		- 1. Wasn’t in service – so can’t lose it
			* not yet under obligation to provide personal service to Dynacare
			* Not in service of Dynacare – not retiring allowance
		- 2. Enacted a specific provision on taxability of retiring allowance
			* Did not include these kind of pmt – not taxable
			* Reason – in another provision, use “intended office/ employment”
				+ Show parliament considered it but did not include it on purpose
* **Unspecified sources of income**
* **Court – can be unspecified sources under 3(a)**
	+ In reality – court reluctant to accept new sources
		- Reason – unfair to tp since don’t know what will be taxed
	+ Case at bar
		- not income from a source – since specific rule govern general rule
		- specific rule – retiring allowance
			* s 248(1)- only in respect of loss of employment / office

###### General Benefit

##### Lowe Characterization of Benefit

F

* Tp – acct exec for insurance company
	+ Company – incentive program for insurance brokers - can win trip to New Orleans
		- Paid for trip to send tp n wife to accompany the brokers to such trip
* Evidence show
	+ Cannot refuse to go on the trip
	+ Wife been there – part of the trip
	+ On all tours – have to accompany the brokers n require to make connections
	+ Don’t have much time to themselves

A Case at bar – Primary purpose – business – personal pleasure is incidental

##### Huffman no material advantage

F Police – clothing allowance for plain clothes officer

A Not benefit – only restore to original econ situation

 Reason – required to buy oversized clothing to accommodate equipment n became worn n stain from work

##### Cutmore b4 lowe –even if required, taxable

F Employer paid for employees to have income tax return prep by professional acct- cuz mandatory policy

A Taxable benefit – even if there’s bona fide business purpose

##### Deitch b4 lowe –even if required, taxable

F Employer paid for professional liability insurance – argue its required

A rejected – cuz obtain clear econ adv, irrelevant if its required

##### Savage Connection to Office

F Tp – employer(life ins company) paid $100/course to improve their knowledge in life ins field.

A

* **Connection to office**
	+ In respect of – broadest possible scope –
	+ Approach
		- Look at subject matter – course is related to her employment
		- Only gift – if sufficiently removed

##### Mindszenthy Gift – difficult to meet

F Tp does presentation using a fake rolex watch. Employer gives him a real one n deducted from business expense

A Taxable –

##### Detcheon

F Schoolteacher at bishop school – also sent children there for no cost

A

* **Benefit?**
* Tp – benefit for employer cuz its mandatory, kids have to act as role models
* Court – no its benefit
* **Value**
* Possibilities
	+ Marginal cost -cost to put another student in classroom
	+ Market value – tuition
	+ Average cost – cost of educating everybody divided by # of students
	+ Cost of sending to public school
* Tp – marginal cost = none
	+ Since school never reached capacity
* Court - average cost
	+ Reason - take fairness into account

###### Scholarship

##### DiMaria

F

* Tp – employer of Dow chemical – paid $3k to tp’s son to attain university
	+ To recog his academic achievement

A

* **Benefit**
	+ Tp – not receiving benefit himself 6(1)(a)
		- Received by children n not paid back
	+ Crown – benefit – had obligation to pay for kids education
	+ Court – no obligation to pay for education
* **By virtue of employment**
	+ tp – had to do all application himself
* **Double taxation**
	+ Tp – award would be taxed for son then again under tp
	+ Crown – no cuz it’s not scholarship
	+ Court – 56(1)(n)
		- Don’t even need to go there – carved out amts received in course of business

###### Specific Benefits

##### Thomas Eligible Housing Loss

F

* Tp – move from Ottawa to St John to work
	+ Spent $850k to buy land n build house
	+ After a yr – employment terminated – moved back to Ottawa
* Employer – bought the house from tp at cost – which was higher the fair market value - $760k
	+ Deal – not contemplated in employment K

A

* **In respect of employment?**
	+ Tp – no cuz it’s a separate agreement
	+ Court – no, in respect of is very broad n includes this
* **Eligible housing loss?**
* Tp – yes
* Court –
	+ **Test –** has relocation enable him to carry on employment / business in Ca?
		- No – did not sell house to enable him to carry on business / be employed in Ottawa
			* Reason – employment was terminated
				+ No established employment in Ottawa – could have stayed in St Johns
* Amt – if were eligible housing loss
	+ Greater of – cost base/ highest fair market value > lesser of – disposed – proceed / fair market value
		- Cost (850k) – fair market value (760k) = 91 k

##### McArdle Debt Forgiveness

F

* Employer forgave tp’s loan when quit his job
	+ Employer – wrote it off as bad debt cuz know it’ll b difficult to collect from tp

A

* Nexus test met – direct connection btw tp’s employment n forgiveness – taxable
	+ Reason – integral part of arrangement which ended tp’s employment

##### Caanda v Hoefele /Krull Reversed by 80.4(1.1)

F Tp – received mortgage interest subsidy paid by employer – cuz required them to move to more expensive housing market

A

* The loan was given – cuz they need another mortgage to buy the house
	+ Unrelated to employment
		- Not covered by the more strict test –

##### Tsiapraillis Insurance Benefits

F

* Tp received disability benefit pmt under an employer pay all insurance policy
	+ Ins company stopped paying🡪 Sued
	+ Parties settled – settlement includes passed benefit n future benefit n cost

A

* **Payable on periodic basis?**
	+ Only with pass benefit –
		- Yes payable – under legal obligation to pay on periodic basis
* **Pursuant to plan**
	+ Yes – surrogatum principle- paid indirectly cuz of the plan
		- Can have inclusions indirectly –

###### Allowances

##### Macdonald allowance

F Tp received housing subsidy when transferred from Regina to Toronto

A

* Case at bar
	+ Purpose – compensate for diff in housing cost, subsidy for living expense
	+ Arbitrary amt – yes – don’t need to submit a receipt
	+ Discretionary – yes no check on how its used

##### Blackman Exception – travel allowance

F

* Tp worked for shipping company – when moved to diff place were paid specific allowance
	+ Required to live there for 200+days

A

* **Not travelling in performance of duty**
	+ Reason – 200+days = sojourning – away temporarily for a length period of time
		- Travel – going around for short time

###### Exemptions

##### Guilbert

F Tp – expected to be at location for short term cuz plan on taking another position

 Quit position – cuz realize won’t be offer the other position

A

* **Allowance that’s exempt?**
	+ Duty – not temporary cuz worked for 3 yr in the end

#### Deductions

###### Travelling Expense

##### Lucs

F

* Tp – electrician with 3 diff jobs
	+ Required to provide own tool but place of storage at work so required to drive
	+ Sought to deduct travel expense

A **Travel expense -** No in course of duty-carrying out the duty, narrower test

###### Meals

##### Healy ordinarily report to

F Worked for 3 racing tracks – 2 in Toronto and one in Fort Erie

A

* Meal deductible – even tho worked at 3 location w/ approx. equal time
* Reason – 8(4) – must be read together with 8(1)h)
	+ Objective e- allow emp who are away to deduct out-of-pocket expenses
		- 8(4)- prevent abuse not prevent legitimate deduction

###### Moving Expense

##### Storrow Pre-amendment – shorter list deduction allowed

F After moving – sought to deduct – diff btw cost n new home, mortgage int, land registry fee, installation cost of dishwasher n new door locks

A Moving expense – cost to ship your stuff only! Other things – unrelated

##### Giannakolpoulos Distance Requirement

F Employed by same employer but required to move – use odometer n calc moved 44km closer

A

* **Distance requirement**
* CRA – draw a straightline on the map , distance was 36km not 44
* Court – test = shortest normal route used by public
	+ Reason – tp travel using ordinary ways of public travel
		- Interpret in light of the purpose

##### Dierckens purpose of move

F Tp – drove schoolbus, after 10 yrs decide to move closer to work location

A

* Allow her to work to be employed at new location?
	+ 1. Distance – yes 46km closer
	+ 2. Purpose of move – enable her to be employed?
		- CRA - no, has been doing it for 10 yrs, n was able to work b4
		- Court –Yes, broad language, no time requirement
			* Intention of amendment – broaden the scope to deal w/ case where u move then later found a job

##### Rennie Ordinarily resides

F

* Tp – start of fat Montreal 🡪 Edmonton🡪 Victoria
	+ 83-84 –lived in Victoria,
	+ Claimed moving expense from Montreal🡪 Edmonton, Edmonton to Victoria – not lots of $
	+ 84 - bought house in Vic, sold house in Montreal – lots $$
		- Claim- selling cost n the cost of buying house in Victoria, n moving furniture
			* Claim –Montreal was original residence

A Case at bar – ordinarily reside in Victoria when claimed deduction

##### Ringham Ordinarily resides

F Tp – accepted job in Budapest, sold home in Kanata n rented a condo – but frequently stayed at hotel

 Budapest project abandoned – move to Richmond Hill to work full time

A Only one move – from Kanata to Richmond Hill. Rented condo= way station – ok to deduct

# Income/Loss from Business/ Property

## Characterization

* 9(1) – income is profit from business/ property
* 9(2)- loss
* 9(3) –income from property does not include any capital gain /capital loss

### Definitions - 248(1)

* **Business -** Includes- profession, calling, trade, manufacturer/ undertaking of any kind whatever
* **Ordinary definition of business**
	+ Objective factor – Morden
		- Organized activity – diff btw how ppl actually in the business vs tp
			* if hobby for profit – then income from business cuz org act MacEachern
				+ treasure-seeking – had agreements btw parties n intend to sell for profit

also ok to deduct loss - if org act Tobias

* + - * if not in original business – may not be taxable
				+ Cameron – fisher for salmon n herring

Joined other fisher n caught killer whales twice

not taxed – cuz not business in usual sense

Reason – two occasions were fortuitous

*“But if caught 3 times – may fall into diff category “*

May argue – adventure of trade/ capital income

* + - * Even if org activitiy – if no way to make money – not taxable
				+ LeBlanc – org way of buying lottery, hired ppl🡪 made profit

No taxable – compulsive gambler

* + Subjective factor – for livelihood/ profit
		- fun/ hobby / leisure ? not business
* Includes - **Adventure/ concern in nature of trade**  Taylor
	+ Consider
	+ manner of dealing-
		- compare to traders in the industry
			* even if done once – if do it the way trader does 🡪 trade
	+ nature and quantity of subject matter
		- quantity – if lots🡪 likely trader
		- nature – potential use of property
			* if can’t use it 🡪 likely trade
	+ intention of tp in dealing w/ property
		- includes secondary intention, but-for test Regal Heights
			* but-for – would u have the property but for the resell of profit
			* tp – bought large parcel of land, primary intention – build shopping centre
				+ secondary intention – sell it so adventure in nature of trade
	+ factors that are irrelevant
		- singles/ isolation of transaction
		- lack of organization
		- total diff in nature – btw transaction n tp’s other acts
		- lack of subjective intention
* Reasonable Expectation of Profit (REOP**)** only use when there’s a personal element Stewart
	+ Consider commercial / personal
		- 1. Commercial – no REOP test
		- 2. Personal – REOP test to determine whether its business/ hobby
	+ Approach –
		- Not conclusive – only 1 factor assisting in determining whether tp is carrying on act in commercial manner
* **Exclude office/ employment**
* **Property –** any kind whatever
	+ Includes
		- A - Right of any kind, share, chose in action
		- B- Money – unless contrary intention
		- C - Timber resources
		- D - Work in progress of business that’s profession
* Business vs property
	+ Business – mixed capital n labour 🡪 active
	+ Property – passive – ex. rental, dividends, IP royalties

## Inclusions

### Gains from Illegal Activities

* Business income from illegal acts – taxable
	+ Reason – fairness to all taxpayers
		- Issue – not means taken by tp to earn income
			* But whether – its liable to taxation under ITA

### Damages and Other Compensation

* **Damages**
* Applies **surrogatum principle** London Thames
	+ 1. Received pursuant to a legal right
	+ 2. Amt in respect of which damages are received – would have been included as income
		- Business income includes:
			* Compensation for lost of profit Manley
			* Compensation for tm infringement n passing off Donald Hart
				+ Loss of profit compensation – not capital
		- Capital if HA Roberts
			* 1. Loss of separate business – loss the source of income
			* 2. Loss of enduring K that are of capital nature
				+ So important to business – not js regular K
				+ If terminated K – business is gone Pe Ben

If only one of several k – business not gone🡪 Profit CNR

* + - Punitive damage = not taxable
			* Even if received pursuant to legal right Bellingham
		- If compensation for diff ch – can be apportioned
			* Compensation for – acct of capital n lost income MV Donna Rae

### Voluntary Payments

* **Not taxable if gift/windfall**
	+ Characteristic Federal Farm
		- Not pursuant to legal right
		- Did not result directly / indirectly from any business operation
		- no expectation of receiving it
		- unlikely to occur again
	+ problematic cases
	+ Cranswick – minority SH received money for $3.35/share to avoid litigation with them
		- Court – not taxable cuz:
			* No enforceable claim, no org effort, not expected by tp – unlikely to occur again
		- Prof – argue – should be capital receipt
	+ Frank Beban Logging- business was terminated cuz govt turning land into park
		- Supposed to receive govt compensation – but was not on statutory compensation list
		- Went to diff media n govt paid him the compensation
		- Court – not compensation for termination of business
			* Reason – not under statutory power
	+ Ok cases
	+ Mohawk oil – received compensation in settlement for negligent construction against Phillips
		- Court- taxable, cuz surrogatum principle
			* It’s compensation for loss of profit n capital
* **Service cases**
* Campbell – swimmer had k with newspaper to attempt to swim across lake
	+ If successful – received 5k, was paid even when she failed
	+ Court – taxable as income from business
		- Reason – K – secured service o Campbell as professional swimmer
			* Altho no legal obligation – but true nature of transaction was performance of service rendered
* **non-competition payments – windfall**
	+ unexpected Fortino
		- tp – sold part of grocery n agree not to compete
	+ right to compete is not property Manrell

### Prizes and Awards

* **approach**
* **1. In Business/ employment?**
	+ Yes – fully taxable
	+ No🡪 Q 2
* **2. Achievement in field ordinarily carried on?**
	+ Yes – 56(1)(n)
		- Prescribed?
			* No – taxable above $500
			* Yes – not taxable
* 56(1)(n) – **Tax if:** For achievement in field of endeavour ordinarily carried on by tp
	+ Subject to $500 exemption 56(3)
	+ Prize for achievement
		- No requirement of competition – principle of associated words Savage
	+ Field ordinarily carried on
		- Interpreted in its ordinary meaning – specific field continuously engaged by that person
			* Turcotte – not taxable
				+ Worked at cinema then unemployed – won $$ n game show cuz ans question related to cinema
				+ Not related to field ordinarily carried on – went too far
	+ Excludes – prescribed prize Reg 7700
		- Recognized by public
			* If publicized / advertised – ok Foulds
			* Consider – evaluation / appreciation LaBelle
				+ CRA – must explain why its not well recog
		- Awarded for meritorious achievement in: art/sc/service to public
			* OK - Even if it’s in field of endeavour carried on Foulds
		- Excludes- amt that can reasonably be regarded as compensation for services
* **Cases**
* **prizes from lucky draw – not taxable**
	+ if there’s element of chance Abraham
		- ie. Not everyone can win it
	+ if not conferred on tp in his capacity as employee/ shareholder – ok Poirier
		- even if need to meet certain conditions to participate in draw
		- tp – met sales quota n participated n won lucky draw
* **prizes in competition –** may be taxable as business income
	+ rother – not taxable when outside of business
		- won prize in competition for design w/ National Gallery of Ca/ Govt of ca
		- not taxable cuz – not working for them – sth outside his regular business
	+ Watts – taxable when had separate K relationship when entered into the competition

### Income from Property

* 9(1) – rent
* 12(1)(g) – royalties
* 12(1)(j,k) – dividends
* 12(1)(c) **interest income**
* **Requirement**
	+ Received / receivable
		- Received – got the cash pmt
		- Receivable – legal right to receive it
	+ On acct of , in lieu of pmt, in satisfaction of
		- In lieu of –
			* Hall – part of bond coupon sold – is in lieu of pmt of int
			* Greenington – if owed int, so other party reduce it from purchase price
				+ Still in lieu of
	+ Interest
		- 1. Compensation for use / retention of principal sum
		- 2. Referable to principal sum - % of principal sum
			* Can be calculated retroactively – so ok if sum does not exist yet Perini
				+ Miller – retroactive salary increase w/ int payable

Court – taxable cuz were referrable to principal sum

Even tho was not determined prior to commencement of time period

* + - * Compensatory scheme
				+ If nth was owned – cannot retroactively calc int

Huston – no right to the amt on which int is calculated

Bellingham- punitive damage – amt on it not int

Ahmad – no principal amt until judgement 🡪 no int

* + - * + If amt determined by k - int

Coughlan – pmt for int on liquidated amt wrongfully w/held

* + - * Jurisprudence – must develop alongside n take into acct innovative financing scheme for new business ventures
				+ If there’s obligation to pay – when there’s principal bal outstanding – ok Sherway
		- 3. Day to day accrual
			* Entitlement to int grow over time
			* Accrues day to day – if paid in compensation for use of money over stipulated period Sherway
* 16(1)(a)- **deemed int where pmts of int and capital are combined**
	+ If reasonable to regard – as part int n part capital
		- irrespective of k / arrangement – deemed int
	+ Consider Groulx, Vanwest
		- Course of negotiation
		- Relationship btw price paid n fair market value
			* If >fair market value, additional cost – presumed to be int
		- Common practise
		- Terms of agreement
			* If given discount when pay earlier n int when pay late – that’s int
	+ If no evidence existed proving these factors – not interest Vanwest

## Deductions

* **test**
* 1. Authorization- ordinary business practise test – objective
	+ 9(1)- concept of net profits
		- Deduction consistent with “ordinary principles of commercial trading/ well accepted business practise”
* 2. Limitations
	+ 18(1)(a) – **income producing purpose test**
		- Limitation on deduction
			* Can only deduct – if its incurred for purpose of producing income
		- 65302 – rejected avoidability and public policy test
		- CIBC – rejected the egregious n repulsive from 65302
			* Interpret to mean – its so serious as in it wont be part of the business
				+ Not public policy test – require parliament to legislate to use it
	+ 18(1)(h) – **no deduction for personal / living expenses** except travel expenses
	+ 67 – reasonable limit
		- General reasonableness limitation on deduction of expenses
		- If spend so much on expense while making so little on profit – may be unreasonable Cippolone
		- If there’s objective evidence showing the expense is excessive – not deductible
		- Ammar – disallowed deduction for rental
			* Reason – could have negotiated for ½ the rate, more expensive then hotel

### Illegal Expenses

* Generally deductible - Espie Printing
	+ Concern with whether they were for purpose of gaining income
	+ Irrelevant whether pmt was illegal / not
* 67.5(1)- prohibit deduction for bribes

### Damage Payments

* Deductible if: Imperial Oil
	+ 1. an ordinary well accepted expense –
	+ 2. Part of business- ordinary n normal so incidental to carrying on the business
* Not deductible if:
	+ Too remote –
		- Davis – pig farmer – driving to see pig from brother’s place
			* Seek to deduct damages paid from car accident on the way
			* Court – not part of business
		- Libel cases
			* Fairrier – sugar broker – paid damages for libel against another govt official
				+ Not deductible – remotely connected
			* Herald – libel for newspaper publisher – deductible

### Fines and Penalties

* 67.6 – no deduction of fine / penalty
	+ Imposed under a law of a country / political subdivision
	+ Reversed 65302 – which allowed deduction

### Legal Defence Costs

* Allowed
	+ if legal proceedings relate to manner which tp carries on business Rolland
		- Consider whether incurred for purpose of gaining / producing income from business
			* Not considering whether trade practise are legal / illegal
				+ Ie – defend cuz intend to carry on the business

Defend business w/in context of business Neeb

* disallowed if –
	+ personal to tp
		- Neeb –drug dealer seek to deduct legal cost for defending against drug trafficking
			* Court – defending yourself from going to jail, not to carry on the business
	+ unrelated to manner in which business carried on
		- tax evasion cases
			* cormier – not normal business activity carried out in course of business operation
			* Summers – not deductible cuz the decision to declare / not is personal one
				+ Not business one
			* Thiele Drywall – if not ordinary / unavoidable then not deductible

### Expenses with Personal Element

* **Personal expense**
* 18(1)(h) – prohibited deduction of personal / living expense
	+ **Consider** –
		- 1. Well accepted business practise? 9(1)
		- 2. Income purpose? 18(1)(a)
* **Recreation, Meal, and Entertainment Expenses**
* 18(1)(l) **–**use of recreational facilities and club dues
	+ I – non-deductibility of cost for use / maintenance of
		- Yacht/camp/lodge/golf course/ facility
			* does not need to be exclusive Sie-Mac
			* Incidental expense – also non-deductible Sie-Mac
		- Except –
			* made in ordinary course of tp’s business
				+ Ie – in business of golf course
		- yacht
			* must be considered – in its ordinary use
			* Barnard – using yacht to take photos, not use of yacht w/ in provision
				+ deductible
	+ Ii – non-deductibility of membership fees in club
		- Which main purpose was to – provide dining, recreation/ sporting facilities to its member
* **Parties –** cost to entertain business guest @ personal property
	+ not deductible
		- adaskin – party after radio show
			* not deductible – cuz radio show already done
		- roebuck – invite client for party – seek to deduct exp for entertainment for business client
			* court – not incurred for producing income nor general business practise
		- Fingold – company pays for the party – fully taxable
	+ unless – specifically identified as business guests
		- Grunbaum – business guest invited by company, special invitation sent thru company n id company name
			* Deductible
* **67.1 – meals and entertainment**
	+ For – human consumption of food / beverage/ enjoyment of entertainment
	+ Only get to deduct 50% - of lesser
		- A – amt actually paid or payable and
		- B – reasonable
	+ Even if tp does not get to personally enjoy/ consume them Stapely
		- Can still only deduct 50%
			* Unless its contemplated in the exceptions
	+ Exceptions - 67.1(2)
		- A – actually in the business of providing food/ entertainment
		- B – fundraising event 🡪 for registered charity
		- C – expense for which tp is specifically compensated
			* Ie. Paid for client’s lunch n bill them – identified in writing
		- D – exempt under 6(6)(a) –
			* Ex. require to include as employment benefit/ meal allowance
		- F – allow to have 6 office parties –
			* open to all employees
			* at particular place of business
		- can deduct if food =fuel
			* Scott – tp bike courier, sought to deduct additional food n beverage he eats
				+ Court – ok – its necessary fuel
* **18(12) – home office expense**
	+ a – can deduct if
		- I – principal place of business Or
		- Ii – use exclusively for earning income
			* And used regularly n continuously for meeting clients
				+ Includes phone contact – don’t need to physically see them Vanka
	+ B - Cannot be use to generate loss
		- Cannot deduct amt that > incomes
	+ C – can carry fwd the disallowed exp to be deducted in later years
	+ General rule
		- If detached sufficiently – ok to deduct
			* Logan –separate phone, frequently meet other drs, use office for purpose of report writing, separated from the house
		- Connected, share utilities – hard to deduct
			* Mallouh – used portion of basement
				+ No separate phone, didn’t treat/ receive pt
			* Ellis – garage for pottery business – was connected
			* Maitland – B&B, lived there so not deductible
				+ Later distinguished – cuz only seasonal, so had house to themselves
			* **Ok to deduct**
			* Sudbrack – allow to deduct country inn even tho lived in there
				+ In a separate aparptment w/in inn – ok
			* Broderick – B&B ok to deduct cuz not seasonal
* **Clothing Expenses**
	+ Deductible only
		- for specialized clothing / customs suitable only for work Giroux
			* Not personal use
	+ If can wear it regularly – personal not deductible No 360
* **Travel Expenses**
* 18(1)(h) – if travelled in course of business – deductible
	+ **Has to travel from “base of operation”**
		- Home can be base of operation Cumming
		- If have a separate office +work location – home cannot be base of operation Henry
		- Once you have base of operation – other things are travel Cork
			* Tp – has right to operate wherever n whenever away from base of operation
				+ Element of choice – irrelevant to affect deducibility Forestell
	+ Deductible when
		- In course of single business
			* Randall –if its one base of a single business carried out in various geographic location
			* Wasserman – its considered travelling btw diff branches of same business
		- Not when one business to another
	+ If involve both business and pleasure – portion may be non-deductible
		- A-1 Steel – if only part of trip was devoted to business – only that part deductible

### Interest Expense

* 20(1)(c) – **paid pursuant to a legal obligation to pay int on**
	+ I – income earning purpose test
		- Have to use $$ to earn taxable income
	+ Ii- amt payable for property acquired for purpose of gaining income
		- Ex. bought sth n have int on unpaid balance – ok to deduct
	+ OR reasonable amt
* **Requirement**  Shell Canada
* 1. Amt must be paid/ payable in the year
* 2. Paid pursuant to legal obligation for int
* 3. Used for purpose of earning non-exempt income
	+ Purpose – can be ancillary, does not need to be bona fide Ludco
		- Even if primary is to obtain capital gain/ avoid tax –
			* If ancillary purpose is to earn income – enough
		- Transactions in btw – such as exchanging to diff currency does not alter the basic ch of borrowed funds
			* If used for purpose of producing income – ok Shell
		- As long as it has ancillary purpose of earning income – deductible Ludco
	+ Approach - look at the transaction, not the series but GAAR might come in
		- Looks at the transaction independently – focus on direct use Singleton
			* Don’t search for econ realities
		- Prob – GAAR might apply
	+ Income – gross income / revenue
		- Not net income / profit
	+ Usage
		- Direct use–ok Bronfman Trust
		- Indirect use depends - where the borrowed fund is?
			* personal use – not deductible Attaie
			* bona fide purpose of earning income – indirect use may be ok
				+ Grenier – original fund loaned from house, even if refinanced ok
				+ Ca Helicopters- primary purpose enable parent comp to buy competitor n 2nd purpose - earn income from business – by charging management fees n amalgamation

Ok – used for an eligible indirect use

* 4. Amt must be reasonable
* **Consider**
	+ Emphasis on economic substance – **rejected**
		- Case focused on econ substance – deduction refused – **rejected by SCC**
			* Bronfman trust- was to pay to trustee
			* Mark resources – look at the actual purpose which is to import the loss
			* Robitalle –took $ out of partnership n bought home then use home to loan $
				+ Contribute back to law firm🡪 ultimate purpose is purchase home
* 20(3)- **deem to be same purpose**
	+ Borrowed money used to repay a loan –
		- Deemed to be used for same purpose as original borrowed funds
	+ Ok to deduct
		- Even if use house as mortgage / refinance Grenier
			* As long as the fund is in the business –
			* Concern with the use – not the source
		- As long as directly n fully traceable to the loan 🡪 can deduct int Tennant

## Timings

### General Rules

* **General accounting method**
	+ 1. Cash – include when received, deduct when paid
	+ 2. Accrual –
		- Include when receivable – legal entitlement but have not received cash yet
		- Deduct when payable
* **Computation of profit** 9(1)
	+ **Rule – true picture of income**
		- Matching of revenue and expense – guideline, not rule of law
			* Ikea- received lump sum inducement for rental
				+ Seek to deduct over period of lease – ie match to expense
				+ Court – no true pic is report it all right now

Truer pic – cuz got money in ur hands n can use it

* + - Accounting method **–** not require to use the same method West Kootenay
			* Use the one that reveals the true pic
			* Reason
				+ 1. Financial n tax acct – for diff purpose

Financial – financial health of company to SH– conservative

Tax – not conservatism

* + - * + 2. Diff company rely on diff acct method – may be unfair

Ie – public trading will require auditing

* + - Determination of profit – look at the express provision, judicial interpretation Candarel
			* Then Interpretive aids – no more
			* GAAP – non-legal tools so external to legal determination of profit
				+ May form the basis of determination – but depends on the facts

Reason – “well-accepted business principles” - codified

* + - * + Subordinate position relative the legal rules – if diff law prevails
* **Inclusion rule**
	+ 18(1)(b) **– amt receivable**
		- Even if not due – include it –unless acct method doesn’t require it
		- Earlier of:
			* I – day service rendered and
			* Ii - day service would have been rendered – had there not been undue delay
		- Receivable –tp is legally entitled if sufficiently ascertainable- Irrelevant if its owed right now
			* Sufficient ascertainable – estimates are ok West kootenay
			* Include only when have the legal right
				+ Colford – certain % of pmt is held back until work was certified

Ont law – no legal right to the holdback until certification

Court – if not certified 🡪 not receivable

If certified – receivable even if tp had not received/ knew its certified

* **Deduction Rules**
	+ 18(1)(a) – amt payable
		- Payable when tp is legally obliged to make a payment Guay Ltee
	+ 18(1)(e) – prohibits deduction for contingent liabilities
		- No amt payable yet – cannot deduct
			* Ex. obligation to reclaim mind when its finished –
				+ If not finished – no obligation to pay🡪 can’t deduct
* **Require to defer deduction**
	+ 18(1)(b) – disallow deduction in respect of outlay, loss/ replacement of capital
		- Pmt on acct of capital/allowance in respect of depreciation, obsolescence/ depletion
			* Need to spread it over time
	+ 18(9)- prepaid expense
		- If can reasonably relate to amt you’ll get this yr – can deduct
		- If not – has to deduct in yr where it can relate

### Inventory

* **General approach**
	+ **Homogenous inventory**
		- Deduct everything – add back cost of inventory that you haven’t sold
* **Inventory valuation**
	+ 10(1) – lower of cost/ mkt
		- Allows deduction for accrued loss in value of unsold inventory
			* Allow it to be written down to its fair market value if lower than cost
		- Excludes adventure in nature of trade
	+ 10(1.01)- inventory valued at cost – for adventure in nature of trade
		- lower of cost / mkt value – doesn’t apply
		- Reverse Friesen – in adventure of trade
			* Bought land expecting to sell at profit
			* Value dropped n seek to deduct
			* Relied on earlier 10(1)- deduct unrealized cost cuz property=inventory n dropped
	+ Possible approaches
		- FIFO, LIFO, average cost – for valuing cost of unsold inventory
			* FIFO -1st in 1st out , dispose inventory in order it was acquired/produced
			* LIFO – last in first out
			* Average cost – avg all cost of inventory – so same cost for all inventory
		- Rejects LIFO – unless reflects actual physical flow of inventory Anaconda
			* Tp – manufacturing metals, metal prices were increasing
				+ adopted LIFO – so able to deduct more cost n reduce its income
				+ Court – need true pic
	+ 10(2.1) **-** Valuation has to be the same
		- Unless with concurrent of minister
		- Response to Cyprus Anvil – p changed inventory method after tax holiday expired
			* Court – can’t change like that – need to reveal true pic
* **Inventory cost –** not deductible until inventory sold Neonex
	+ Approach – true pic principle
	+ Calculation
		- Cost of inventory sold = value of inventory at beginning of yr+cost of inv acquired-value of inventory at end
* **Definition**  248(1)
	+ Description of property the cost/ value – relevant in computing tp’s income from business
		- Either becus:
			* Cost/ value – deduct in computing tp’s gross profit like in Neonex OR
			* Cuz cost /value of homogenous inventory – added back in computing tp’s gross profit

### Running Expenses

* **definition –** expense of running the business
	+ General business expense – can’t link it to anything
	+ Ex. advertising – unknown if it will bring income
* **Currently deductible**
* If can’t be easily matched with subsequent revenues Oxford Shopping
	+ May be reversed by 18(9) – may be able to argue pmt is for tax if paid tax after
* Produce benefits in current period and future periods
	+ includes
		- Cummings-lease pickup pmt – induce ppl to move over by picking up their lease pmt
		- tenant inducement payments
			* Canderel - – paid lump sum for tenants to sign lease here
				+ there’s whole bunch of benefits – hard to link just to length of lease
				+ not related to any income stream

### Prepaid Expenses

* 18(9) – **disallows immediate deduction of** prepaid expenses for
	+ A – no deduction if reasonably be regarded as having been made/ incurred for
		- I - Services to be rendered after the yr
		- Ii – on acct of – int/tax/rent/royalties for period after end of yr
		- Iii – consideration for insurance
	+ B – deductible when it can reasonably be considered to relate
	+ Requirement
		- 1. One of the category of pmt
		- 2. Relate to subsequent period
* Doesn’t apply to tenant inducement payment – cuz parliament didn’t include it Toronto College

### Capital Expenditures

* 18(1)(b) – **no deduction for**
	+ 1. Capital outlay loss
	+ 2. Outlay, loss, replacement of capital / pmt on acct of capital
		- Property acquired can be:
			* Depreciable capital property- generally tangible
				+ Includes – intangible ones like patent
			* Non-depreciable capital property
				+ Ex. land, shares
				+ No deduction – capital gain /loss – only ½ deductible when disposed
			* Eligible capital property – gd will of business
			* Interest – 20(1)(c)
	+ 3. Allowance in respect of depreciation, obsolescence/depletion
		- Depreciable capital property🡪 capital expense
			* 20(1)(a) – capital allowance rule
		- Obsolescence – property is not working anymore
			* When dispose worthless property – can get deduction
				+ 20(16)- terminal loss
			* Depletion – resources
* **Deduction approach**
	+ Generally deducted over period of time – to reflect the true pic
* **Characterization - two tests** Johns-Manville
	+ **1. Expense incurred once and for all**  British Insulated and Helsby Cables
		- View – bringing into existence an asset / adv for enduring benefit of trade
		- Capital expense
			* Expended to acquire means of production
			* Not once and for all – AND
				+ With a view to bring into existence an asset for enduring benefit of trade
		- Currently deducible –
			* Use the means of production
	+ **2. expended on est the structure w/in which profits are earned / in process of earning income** B.P. Australia, Sun Newspapers, Hallstrom’s
		- Capital expense – expended to acquire means of production
			* Acquisition of means of production
			* Spend on structure
		- Currently deductible – part of money earning process
* **Separate asset?**
* approach – Canada Steamship
	+ proportion of amt of the whole value
		- if large amt of whole value – separate
			* Thomson Construction – 6k/27k – large amt
				+ Separate asset🡪 capital exp
			* Even if separate parts – if large proportion – capital
				+ Donohue Normick-separate parts but large portion relative to whole value, will last for 10 yrs n not intended to be used for resale
	+ amt compare to ordinary repair
		- if large – separate
		- Van Tugboat – usual repair is 15k, this cost 42k – capital
* consider
	+ assets that are part of larger assets – capital expense
		- consider separate asset – ex. engine Canada Steamship
* **Acquisition n maintenance / repair of tangible property**
	+ Repair – deductible
		- Include
			* Canaport - to prevent prob n extend life expectancy
			* **Goldbar** – if only trying to repair the problem, use of current tech is ok
				+ Court – focus on the purpose of action

If view to bring in enduring benefit – capital exp

Repair – currently deductible expense

* + - Exclude –
			* replacement that’s so diff in kind
			* replacement – that’s of enduring nature Canadian Reynolds
		- Consideration –
			* If replacing w/ new technology – ok to deduct
				+ But if significant improvement – not deductible
	+ Improvement/ upgrade – capital expense
		- Capital expense - If replace a substantial part w/ sth essentially diff in kind Shabro

### Capital Cost Allowances

* **Different ways of depreciation**
	+ 1. Straight line- deduct same amt until goes to zero
	+ 2. Declining balance – deduct certain %
		- Reason – many asset depreciate much quickly in the beginning
* **Definition**
* **Capital cost of asset CCA–** 20(1)(a)
	+ The money deducted
	+ Rates- Regulation 1100(1)
* **Undepreciated capital cost UCC –** 13(21)
	+ UCC = A-E –F +B
		- A – capital cost of asset
		- E – capital cost allowance 20(1)(a)
			* Total depreciation – as defined in 13(21)
				+ Include terminal loss 20(16)

Occurs when no property remain in class –

n deducted less than actual depreciation

able to deduct when calculating UCC

* + - F – subtract lesser of
			* proceed of disposition Or
			* capital cost
		- B – sum of all recaptured depreciation taken
			* If UCC = negative
				+ Tp – claimed more deduction then its actual decrease in value
			* Negative balance - recaptured by including in computation of income
			* 13(1)-
	+ Calculations
		- 1 asset in class
			* Year 1 – UCC = Cost – CCA
			* Year 2 – if disposed
				+ UCC = last yr UCC – proceed

If UCC = negative – taxed back the negative (recapture depreciation)

If UCC = positive – terminal loss, can deduct

Proceed > cost –

=last yr UCC –capital cost

Tax ½ on gain =Proceed-cost

* + - Acquisition of depreciable property - + to UCC
		- Recapture depreciation – inclusion in income 13(1)
			* when UCC=(-)ve
		- terminal loss- deduct from income 20(16)
			* UCC = (+)ve
* **Depreciable property –** 13(21)
	+ Requirement
		- Income producing
	+ Included in Regulation 1100
		- Classes of property – Schedule II
	+ Exclusion – 1102(1) – shall be deemed not to include
		- B – if in inventory
		- C – not acquired for purpose of gaining/ producing income
		- F- can’t deduct one that’s in 18(1)(l)
		- (2)- land
* **Disposition –** 248(1)
* **Proceed of disposition –** 13(21)
	+ A **–** sale of property
	+ B – compensation for property unlawfully taken
	+ C – compensation from ins
* **Approach to CCA**
* **1. Depreciable property?**
	+ Income producing?
		- Look to purpose of acquiring property
			* If acquired and demolished right away – other purpose Ben’s LTD
				+ Note – if the rental was longer – may be able to argue its income producing
			* If originally plan to acquire property to produce income
				+ Plan failed so tear down – ok
			* As long as purpose was to make income – no requirement that have to hold it for specific amt of time Hickman motors
				+ Tp – held property for 5 days then sold it

Earned rental income during the time – ok to deduct

* + Not part of exclusion?
* **Deduction**
	+ 20(1)(a)- allowed CCA deduction
		- 1100(1), Schedule II
	+ Prohibition
		- Cannot use CCA to produce net loss for rental properties 1100(11)&(14)
			* only deduct up to net income = 0
* **Class**
	+ Sometimes act create separate class for diff property
		- 1101(a)(ac)- rental property – each in its own class
			* With capital cost $50k or more
* Diff between accounting n ITA
	+ 1. Method used
		- ITA - usually decline balancing approach
		- Acct – both, tend to use more straight line
	+ 2. Pooled
		- ITA – assets are pooled into diff class, deduct form pool of that class
		- Acct – depreciate one by one
	+ 3. Depreciation is optional in ITA

###### Characterization

##### Morden Business?

F Originally – own racing stable w/ extensively org gambling activities

* 1948 – dispose of all the horses – only gambles occasionally

A

* case at bar
	+ objective – org diff
		- cuz gambler – on avg they loose but bookies – making money
	+ subjective – hobby

##### Taylor Adventure of Trade

F Tp – purchased lead when realize there’s adv to make profit n sold it to own company 🡪 profit

A

* case at bar
	+ manner of dealing
	+ nature n quantity
		- lots lead, can’t do anything w/ the amt of lead

##### Stewart

F Bought condos intended to rent it out – turn out to be worse so took actions to consolidate financially

 Sold condos – but chose not to pay down debt when had $$ to do so

 Sought to deduct int expense against income – reassessed cuz wasn’t running a business, no REOP

A` Case at bar – commercial cuz not living there – no REOP n deductible

#### Inclusions

###### Gains from Illegal Act

##### No 275 illegal act – taxable

F Tp is prostitute but CRA assessed her income – argue cannot be contemplated to tax illegal acts

A Taxable – reason unfair for ppl who are doing things legally n paying tax

###### Damages

##### Manley

F Tp sued for breach of warranty n awarded damage = expected profit

A Compensation for business income

###### Voluntary Pmt

##### Federal Farms

F Received relief fund for farm destroyed by tornado

A

* **gift?**
* Cra – taxable
	+ Took place of growing crops – if compensation for inventory🡪 business income
* Court –gift cuz no legal right
	+ If ins- have legal right so entitled to get sth back
* Case at bar – no ins, no legal right

###### Prize and Awards

##### Abraham Lucky Draw – not taxable

F Tp – owned IGA store n entered into draw. Won car – got cash instead

A Prize – not taxable

* + Reason –
		- Not remuneration for services
		- Pure chance – when probability is low enough – breaks chain of connection w/ business

##### Rumack

F Wont set for life lottery –

A

* Taxed on the prize cuz its like income
	+ Reason – recurring, stream of pmt
	+ Source of income – k obligation w/ lottery association
* tax like capital
	+ assume – purchased annuity n get return on amt put in
* **Prof’s view – wrong!!**
	+ Annuity – owned by the lottery association – not the tp
	+ It’s a prize – artificial to tax

##### Savage

F Worked for Life ins company n completed course so awarded $100/course

A were amendments made to act- now would be taxable

##### Foulds Prescribed Prize

F Tp – won music prize for the band – only use to finance an album of original music

A

* **Not taxable**
	+ Not business income – can’t use it for anything, usage tied
	+ Prescribed prize

###### Property from Income – Interest

##### Perini Estate Int – can be retroactively calc

F Tp – sold shares to Columbia record

* 3 elements to sale: 600k cash, share of profits, interest = 7%of vendor’s share of net profit
	+ Argue – non are taxable income
		- Interest – altho called int but its part of purchase price🡪 all capital

A Still interest – even if retroactively calculated

##### Groulx Deemed Int

F Tp – had offer to buy his farm – after negotiation – decide payments are paid over time

 K – late pmt – pay int on if early w/ pmt – discount

A **Reasonable to regard as int? yes**

* Case at bar
	+ K – reversed int
	+ Std practise – charge int when pmt deferred

#### Deduction

##### Espie Printing illegal payments

F Tp – made overtime wage pmt in circumstances that may have been illegal

A Deductible -

##### Imperial Oil Damage payments

F Tp - oil company ships oil – ship collided w/ another so paid damages

 \*\*note – decided under earlier Act – test was more narrow for purpose of earning income

A Deductibility

* Approach –
	+ 1. Decide whether its an ordinary well accepted expense –
		- Yes – incidental part of tp’s business to have accidents
	+ 2. Part of business- ordinary n normal so incidental to carrying on the business?
		- Yes – normal n ordinary hazard

##### Rolland Paper Legal cost

F Various company – charged under anti-monopoly provision of Crim code, seek to deduct legal cost

A

* Legal cost – deductible –
	+ Consider whether legal fees incurred as incurred for purpose of gaining / producing income from business
	+ Not considering whether trade practise are legal / illegal

##### 65302 BC

F # Company – had quota on egg and chicken supply

 Were making deliberate decision to produce over-quota – cuz did not want to purchase quota at curret price – caught n fined

A

* **Can the levy be deducted? Yes**
	+ Public policy – gone
		- It’s for govt to decide what’s the right public policy –
			* If court🡪 uncertainty
		- Not supported by the act
	+ avoidability – gone
		- Prob – from case law, no support from statute
	+ But said – if have sth so egregious / repulsive – not deductible
		- \*\*rejected by FCA in CIBC

###### Personal Expense

##### Royal Trust recreation

F Tp – trust company, required employee to join clubs n company paid foro membership

A

* 1. Is it a well-accepted business practise? Yes, other companies doing same thing
* 2. Income purpose – Yes, evidence of actually earning income
* Deductible -\*\*reversed by parliament

##### Stapley food n entertainment

F Realtor who bought gift certificate/ sports ticket n gave them to clients

A

* **Only deduct ½**
	+ Even if do not get to personally consume them
	+ Reason – not included in exception of the scheme

##### No 360 clothing expense

F Tp – actress claimed to deduct clothes

A No – if can go out n wear regularly – cannot deduct

##### Cippolone s 67 – reasonableness

F Tp – institute of humour – seek to deduct expense

A **Reasonable expense?**

* + Spent so much expense – while making so little on profit – not reasonable
		- Referred back to minister to consider which are reasonable

##### Locke

F Seek to deduct 1/6 of home expense – cuz do work at home

A

* **At the time – no 18(12)(a)**
	+ Need indication to public that you are operating business
* Case at bar
	+ No sign, unable to est # of clients

##### Cumming Travel for business

F Dr lived ½ mile away from hospital – hospital, no area for tp to carry out admin fcn of practise

Usually travel home to work on admin related n return to hospital to visit pt

A **travelling in course of business?**

* Base of operation – home
	+ So commute btw hospital n home not personal living expense

##### Bornfman Trust Int Expense

F Sets up trust for daughter – in discretion of trustee

* Trust – want to make capital distribution to her
	+ Decided to borrow money cuz not gd time to sell shares
	+ Seek to deduct interest expense

A Disallowed deduction

* 1. Ignore indirect use of money – consider only current n direct use of loan
* 2. Only concern w/ what tp had done – not what could have done

##### Attaie reject indirect use

F Tp – left Iran when still had so money there so had to borrow $$ to buy house first in Ca.

 When got the money – deposit the money cuz of high nt rate rather than pay off mortgage

 Sough to deduct mortgage int - argue $$ is used for investment indirectly

A No deduction – living in the house so for personal use not for purpose of making income

##### Grenier ok to replace loan if still in business

F TP – In order to purchase dealership borrowed $$ by mortgaging home. - @this pt – int deductible

* Then sold house for 110k – paid off the money to bank
	+ mortgage some more money to buy new house –
	+ want to deduct int from new house mortgage – argue it had replaced the original loan

A Deduction for the amt of the original loan - reason fund is still in the business

##### Mark Resources

F Ca company with subsidiary –subsidiary bunch of losses accumulated

* borrowed money n put them in subsidiary n distribute dividends back to company
* Seek to deduct int expense – reason purpose of earning income – ie getting dividends

A No deduction – what’s actually done is import loss from US to Canada

##### Ludco Ancillary purpose – ok

F Borrowed money to invest in offshore tax haven –

* declared purpose to pay little in dividends to accumulate untaxed investment returns
	+ in turn – accumulated asset increase companies share price🡪 can sell shares at capital gain
* seek to deduct int on money borrowed – 6m but earned only $600k in dividends
* when sold share – capital gain of 9.24m

A Deduction allowed for full $6m – income refers to income subject to tax, not net income

 If tp has ancillary purpose to earn income subject to tax – int expense deductible

##### Singleton Look at ancillary purpose

F Took out money from partnership acct to buy house – borrowed money to contribute to acct again

A Deduction allowed – purpose was to refinance his capital acct

#### Timing

##### West Kootenay True Pic – method doesn’t have to be the same

F Energy company with 2 mth billing cycle – at end of yr have electricity delivered but unbilled

* 2 methods of approach –
	+ Until 1979 – did not include them
	+ Acct advice – include them if delivered n estimate how much it’ll cost
		- Financial acct – accrual
		- Tax- original method

A Case at bar – include unbilled revenue cuz truer pic

##### JL Guay Ltee timing it becomes payable

F Tp – construction business, held back some pmt of sub-k

 Want to deduct the hold back claiming they are payable

A Not payable – until work is signed off by architect--> not deductible

###### Inventory

##### Neonex inv cost – not deductible until sold

F In business of making custom made electrical signs – at end of yr has uncompleted signs

* Originally – treated it as work in progress – deduct cost when sold them
* 1970-72 – deduct cost incurred for partially produced sign
	+ accelerated deduction🡪 pay less tax this yr

A True pic principle applies – better to reflect deduction of exp when revenue is generated

###### Running Expense

##### Oxford

F Tp – paid 500k to city as inducement to create road to shopping center

 Attempt to spread cost over 15yrs on financial statement – but deduct all in tax

A True picture

* running expense –
	+ not to spread over 15 yr – cuz cannot be matched up/ linked to particular revenue
		- no idea if it will lead to more income / not

###### Capital Expense

##### Johns-Manville

F Bought more land to avoid risk of landslide – sought to deduct cost of land as ordinary business expense

A Not capital expense

* reason
	+ purpose buying – remove a current obstacle in operating mine
		- not acquire a capital asset
	+ cost incurred – as integral part of day-to-day operations
	+ after mining – land has no intrinsic value – but consumed by mining process
	+ land – no enduring value cuz has to constantly buy more land to keep going
	+ annual cost of buying land – small relative to cost of operating the mine

##### Canada Steamship

F Had ship – need to repair holes of ship n install new boilers on ship

I Capital / regular exp – acquiring new boiler, fixing the hole

A

* **separate asset**
	+ treatment – if have sth that’s separate in part of a larger asset – treat it as separate capital expense
* case at bar
	+ holes – just repairing the ship – not replacing some separate asset
	+ engine – replacing a separate asset

###### CCA

##### Ben’s Ltd

F Tp – bakery purchased adjacent land – demolished them once got rezoned

 Seek to deduct the demolition – argue its income producing cuz had one tenant

A

* approach – look at whether acquire the building for purpose of income
* case at bar – no
	+ demolished the building cuz purpose was to expand
	+ rental was short term

# Taxable Capital Gains and Allowable Capital Loss

## Computation

* **1. General rules** – 38-40
	+ 3(b) – net taxable capital gains=taxable capital gain – allowable capital loss
		- Allowable capital loss generally deductible only against capital gains
	+ 38
		- A– ½ of capital gains taxable
		- B – ½ of capital loss deductible
	+ **39** – gains n loss defined as residual
		- B – loss
			* Excludes – disposition of depreciable property
				+ 🡪 terminal loss 20(16)
	+ 40(1)
		- A – **gain = proceed of disposition** – (adjusted cost base+selling cost)
			* Proceed – sale price
			* Adjusted cost base – generally cost
			* Ii, iii – timing rules
				+ Designed to allow tp who have big gain in 1 yr but don’t receive all the gain at the same time to spread it out over time
		- B – **loss = (ACB+selling cost) – proceed of disposition**
* **2. Special rules**
* 40(2)(g)(iii) – personal use property - no deduction
	+ Loss deemed to be nil
	+ Def’n- includes
		- Property used primarily for personal use/ enjoyment of tp / person related
	+ Excludes – listed personal property
		- Can only deduct against gains
* **Deemed disposition -** trigger loss/ gain when haven’t dispose it
	+ 45(1)(a) – change in use- use for personal than gain/ produce income or vice versa
		- Deemed tp to have
			* Iii – dispose for proceeds = fair market value
			* Iv – immediately reacquired at cost=fair market value
	+ 13(7(a)(b)
* **Non-recognition rule**
	+ 73(1) – transfer of capital property to spouse/ common law partners
		- Won’t tax the transfer
		- Deemed acquired at proceed
			* I – depreciable
				+ If only 1 asset = UCC
			* Ii – other case
				+ Adjusted cost base
		- Can elect out
* **Definitions**
	+ Disposition – 248(1)
		- A – do sth that entitles u to proceed of disposition
	+ Adjusted cost base – 54
		- A- depreciable property – capital cost to tp as of that time
		- B - Other case, cost to tp of property adjusted
	+ Proceed of disposition – 54
		- A - sale price of property that has been sold
			* Includes various other things

## Characterization

* **Different kinds of property**
* **Capital property** – give rise to capital gain / losses 54
	+ Depreciable property
	+ Includes personal-use property
* **Inventory** – give rise to business income 248
	+ If not capital property / eligible capital property – its inventory Friesen
* **Approach**
* **1. Is it capital property / inventory**
	+ Business income/ adventure of trade – inventory
	+ Others – capital
		- Includes personal property
	+ Land – could be both
		- Non-depreciable but can be any kinds of use
		- Looks at the manner dealing w/ land

|  |  |  |
| --- | --- | --- |
|  | Business Income – Inventory | Capital Property  |
| Holding period | Short | Long |
| Circumstances of sale | Solicited offer w/out crisis  | Unsolicited offer / crisis such as threat of expropriation  |
| Other activities carried out by tp  | Frequently buys n sells land/ in business as developer | rarely buys n sells land  |
| Method of financing/ REOP | Primarily bought w/ borrowed funds 🡪 trading intent | More equity 🡪 investing intent |
| Use of property | Not for personal use | Tp’s personal use |
| Secondary intention to profit from resale (Regal Heights) | Yes | No  |

* Taylor test - Whether its an adventure of trade? Yes 🡪 inventory
	+ Manner of dealing
	+ Nature and quantity of subject matter
	+ Circumstances responsible for disposition
	+ Reasonable expectation of profit
		- If speculative-
	+ Secondary intention doctrine – but for
		- Require possibility of resale at a profit – as motivating reason for purchase
		- If intention to carry out business as long-term investment – inventory Racine
* **Property held in adventure in nature of trade= inventory**
	+ Not capital property🡪 cannot be ch as personal use property – Burnet
	+ Prob w/ case- seem to suggest its personal use

##### Regal Heights inv/ capital property

F Acquired lands to build shopping centre – but failed so sold off land n made a gain

A

* **Inventory or capital property?**
* Adventure in trade=business income = inventory
	+ Reason – adventure – speculative, always depended on chance
		- Nth concrete that it was going to happen
		- Secondary intention – altho had primary intention to build shopping centre
			* If couldn’t realize – could still get gd piece of land🡪 highly speculative

##### Burnett

F Tear down the house n built another one – then sold it at massive loss

 Seek to deduct – argue its adventure in nature of trade – so can deduct the loss

A

* **Inventory**
	+ Factors suggesting – not inventory
		- Lived in it, children bedroom named after kid
	+ Accept how tp started off as adventure in nature of trade- then ran into prob
	+ Able to deduct

# Rules Relating to Computation of Income

## Allocation of Proceeds

* 68 – if an amt can reasonably be regarded as being in part consideration for disposition of particular property
	+ A- reasonable amt can be deemed proceeds of disposition
	+ Idea – if got some global purchase price
		- Reasonable to deem a reasonable amt as proceed –
		- Revenue authority – can allocate proceed in some global purchase
* **Approach to allocation**
	+ General rule – defer to party allocation Golden
		- Factors to consider
			* Consider matter from perspective of purchaser n vendor
			* Hard bargaining
			* Reasonable allocation
				+ Doesn’t need to be fair market value – just reasonable requirement
	+ Relocation likely if
		- Agreed amt differs substantial from fair market value
			* Peterson – allocated a lot to business gdwill
				+ But was non-existent cuz business has been suffering
				+ court – allocation unreasonable
		- no hard bargaining over allocation
			* Leonard – tp bought farm n quota, for tax – used FMV rather than k agreement
				+ Argue – s 68 – allocation can be deemed
				+ Court – allowed – cuz could not have bargained

There’s significant price btw FMV vs reasonable allocation

* + Land and buildings
		- Possible to claim building value = zero if purchaser will demolish it Bens Ltd
		- But if building was used by vendor – Stanley
			* Even if purchaser tear it down – should still have some value
		- If building demolished – then sold land, s 68 doesn’t apply Malloney’s
		- Govt response – 12.21.1 – if dispose land n building at same time
			* Capital gain on land n terminal loss on building – automatically allocates proceed

## Non-Arm’s Length Transfers

* 251(1) – definition of NAL
	+ A – related personal shall be deemed not to deal w/ each at arm’s length
		- Include – blood related, common law, adopted 251(6)
			* Includes in-laws
	+ C – any other case- question of fact whether its NAL
* 69(1)- applies **except as expressly provided in this act** – can be overridden
	+ a- if acquired anything from person dealing at non-arm’s length (NAL) >FMV
		- Deemed to acquire at FMV
	+ B – disposed for no proceed / proceed <FMV to NAL
		- Deemed to receive proceeds = FMV
	+ Regular transfer- double taxation since no adjustment
		- Court – favour adjustment on both sides of transaction
	+ Gift – adjust both sides
		- 69(1)(b)(Ii) – gift – tp deemed to have received =FMV
		- 69(1)(c) – recipient deemed to acquire at cost = fmv
* 73(1) – transfer of capital property to spouse/ common law partners- not taxable
	+ A – deemed to have dispose at cost
	+ B – acquire at cost

## Attribution Rules

* 74.1(1)- income/ loss from property transferred to spouse/ common-law partner
	+ Attributed to transferor – not transferee
* 74.1(2) – income/ loss from property transferred to person under 18 / niece / nephew
	+ Deemed to be transferor
* 74.2(1) - Capital gains n loss from property transferred
	+ Attributed back to transferor
		- I – net taxable gain of all transfer – if gain> loss- deemed to be capital gain of transferor
		- B- if have loss – loss for transferor
* 74.5(1) – attribution rule does not apply if
	+ A – FMV property transferred does not > FMV of property as consideration And
		- Ie paid fair market value
	+ C – if property is transferred to / for benefit of spouse
		- Transferor – elects out of rollover rule 73(1)
* 74.5(11) – attribution rule does not apply to transfer
	+ If reasonably conclude – one of main reason is to reduce amt
		- But for this section

##### Golden

F tp – agreement to purchase land, building n vehicles

A defer to party allocation

##### Lipson

F Transaction designed to make mortgage int deductible w/out triggering taxable capital gain

* Sold shares to wife – roll over rule in 73(1)
* Reverse attribution of net loss on share from wife to husband

A

* Majority – transaction did not misuse/ abuse int deduction 20(1)(c) / refinancing rule in 20(3)
	+ Misuse / abuse of 74.1(1)
* Minority – no misuse
	+ Parliament must contemplated that tp would have taken adv of various rule to min tax
* Rothstein J –
	+ GAAR – applies as last result
	+ 74.5(11) – should apply – the attribution rule should not apply to the transfer!